

# COMMONWEALTH of VIRGINIA

# DEPARTMENT OF CONSERVATION AND RECREATION

600 East Main Street, 24<sup>th</sup> Floor Richmond, Virginia 23219 (804) 786-6124

June 26, 2013

Ms. Barbara Donnellan County Manager Arlington County Office of the County Manager 2100 Clarendon Blvd. Suite 302 Arlington, Virginia 22201

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE:

Virginia Stormwater Management Program (VSMP) Permit Reissuance

Municipal Separate Storm Sewer System (MS4) Permit No. VA0088579, Arlington County

Dear Ms. Donnellan:

Your Virginia Stormwater Management Program (VSMP) MS4 permit is enclosed. This permit supersedes the previous permit VA0088579 issued to this county. As indicated in the fact sheet, the permit has changed; please read the permit carefully because you are responsible for meeting all permit conditions.

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty days after the service of this permit which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court of Virginia with the Director, Department of Conservation and Recreation. In the event that this decision is served on you by mail, three days are added to that period.

Alternatively, any owner under § 10.1-603.12:6 of the Stormwater Management Act aggrieved by any action of the Soil and Conservation Board taken without a formal hearing, or by inaction of the Board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the Board. In cases involving actions of the Board, such petition must be filed within thirty days after notice of such action is mailed to such owner by certified mail.

If you have any questions about the permit, please contact Ms. Ginny Snead, P.E. at (804) 698-4055.

Sincerely

David A. Johnson

Director

Enclosures:

Permit

**Fact Sheet** 

CC:

EPA-3WP12



# COMMONWEALTH of VIRGINIA

# DEPARTMENT OF CONSERVATION AND RECREATION

Permit No.: VA0088579 Effective Date: June 26, 2013 Expiration Date: June 25, 2018

# AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER MANAGEMENT PROGRAM AND THE VIRGINIA STORMWATER MANAGEMENT ACT

Pursuant to the Clean Water Act as amended and the Virginia Stormwater Management Act and regulations adopted pursuant thereto, the following owner is authorized to discharge in accordance with the effluent limitations, monitoring requirements, and other conditions set forth in this permit.

Permittee: Arlington County

Facility Name: Arlington County Municipal Separate Storm Sewer System

County Location: Arlington County is 26 square miles in area and is bordered by the Potomac

River to the North and East, the City of Alexandria to the South, and Fairfax

County to the West and South.

The owner is authorized to discharge from municipal-owned storm sewer outfalls to the surface waters in the following watersheds:

Watersheds: Stormwater from Arlington County discharges into four 6th order hydrologic units: PL23 (Potomac River-Nichols Run-Scott Run), PL24 (Potomac River-Pimmit Run), PL25 (Potomac River-Fourmile Run), PL26 (Cameron Run)

> There are 11 major watersheds: Gulf Branch, Donaldson Run, Potomac River (A), Windy Run, Spout Run, Colonial Village/Rocky Run, Potomac River (B), Four Mile Run (contains the following major streams: Lower Long Branch, Doctor's Branch, Lubber Run, and Upper Long Branch), Little

Pimmit Run, Pimmit Run, and Roaches Run

River Basin: Potomac

Sections: 6.7.8

Classes: II, III

Special Standards: b

The authorized discharge shall be in accordance with this cover page, Part I - Authorization, Effluent Limitations and Monitoring Requirements and Part II - Conditions Applicable To All VSMP Permits, as set forth herein.

Director, Department of Conservation and Recreation

# PART I - AUTHORIZATION, EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

## A. DISCHARGES AUTHORIZED UNDER THIS PERMIT

# 1. Authorized Discharges

- a) This permit authorizes the discharge of stormwater from all existing and new municipal separate stormwater point source discharges to surface waters from the Municipal Separate Storm Sewer System (MS4) owned or operated by the County of Arlington, Virginia.
- b) The following discharges, whether discharged separately or commingled with municipal stormwater, are also authorized by this permit for discharge through the MS4:
  - 1) Non-stormwater discharges and stormwater discharges associated with industrial activity (defined at 9 VAC 25-31-10) that are authorized by a separate Virginia Pollutant Discharge Elimination System (VPDES) permit;
  - 2) Discharges from construction activities that are regulated under the Virginia Stormwater Management Program (VSMP) (4VAC 50-60-10 et. seq.) and authorized by a separate VSMP permit; and
  - 3) The following non-stormwater discharges unless the State Water Control Board, the Virginia Soil and Water Conservation Board (Board), or the permittee determines the discharge to be a significant source of pollutants to surface waters:
    - charge to be a significant source of pollutants to surface waters:

      (a) water line flushing;
      - · ,
    - (b) landscape irrigation;
    - (c) diverted stream flows;
    - (d) rising ground waters;
    - (e) uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
    - (f) uncontaminated pumped ground water;
    - (g) discharges from potable water sources;
    - (h) foundation drains;
    - (i) air conditioning condensation;
    - (i) irrigation water;
    - (k) springs;
    - (I) water from crawl space pumps;
    - (m) footing drains;
    - (n) lawn watering;

- (o) individual residential car washing;
- (p) flows from riparian habitats and wetlands;
- (q) dechlorinated swimming pool discharges;
- (r) street wash water;
- (s) discharges or flows from fire fighting; and,
- (t) other activities generating discharges identified by the Department of Environmental Quality as not requiring VPDES authorization.
- 4) Materials from a spill are not authorized unless the discharge of material resulting from a spill is necessary to prevent loss of life, personal injury, or severe property damage. The permittee shall take, or require the responsible party to take, all reasonable steps to minimize or prevent any adverse effect on human health or the environment in accordance with the permittee's program under Part I.B.2.g) (Spill Prevention and Response). This permit does not transfer liability for a spill itself from the party(ies) responsible for the spill to the permittee nor relieve the party(ies) responsible for a spill from the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302. The permittee is responsible for any reporting requirement listed under Part II.G of this permit.

# 2. Permittee Responsibilities

This permit establishes the specific requirements applicable to the permittee for the term of this permit. The permittee is responsible for compliance with this permit. The permittee shall implement and refine the MS4 Program Plan (as set forth in Part I.B) to ensure compliance with this permit. The Department has determined that this program reduces the discharge of pollutants to the maximum extent practicable. Where wasteloads have been allocated for pollutant(s) of concern in an approved TMDL, the permittee shall implement the special conditions as set forth in Part I.D of this permit. Compliance with the requirements of this permit shall also constitute adequate progress for this permit term towards complying with the assumptions and requirements of the applicable TMDL wasteload allocations such that the discharge does not cause or contribute to violation of the water quality standards.

The permittee shall clearly define the roles and responsibilities of each of the permittee's departments, divisions or subdivisions in maintaining permit compliance. If the permittee relies on another party to implement portions of the MS4 Program Plan, both parties shall document the agreement in writing. The agreement shall be retained by the permittee with the MS4 Program Plan. Roles and responsibilities shall be updated as necessary. Where the permittee relies on another party to implement a portion of this permit, responsibility for compliance with this permit shall remain with the permittee.

In the event the permittee is unable to meet conditions of this permit due to circumstances beyond the permittee's control, a written explanation of the circumstances that prevented permit compliance shall be submitted to the Department in the annual report. Circumstances beyond the permittee's control may include abnormal climatic conditions; weather conditions that make certain requirements unsafe or impracticable; or unavoidable equipment failures caused by weather conditions or other conditions beyond the reasonable control of the permittee (operator error and failure to properly maintain equipment are not conditions beyond the control of the permittee). The failure to provide adequate program funding, staffing or equipment maintenance shall not be an acceptable explanation for failure to meet permit conditions. The Board will determine, at its sole

discretion, whether the reported information will result in an enforcement action. In addition, the permittee shall report noncompliance which may adversely affect surface waters or endanger public health in accordance with Part II.I.

## SPECIFIC REPORTING REQUIREMENTS:

- Each annual report shall include a current list of roles and responsibilities.
- Each annual report shall include a list of those episodes of non-compliance.

# 3. Legal Authority

The permittee shall maintain and utilize its legal authority authorized by the Commonwealth of Virginia to control discharges to and from the MS4 in the manner established by the specific requirements of this permit. The legal authority shall enable the permittee to:

- a) Control the contribution of pollutants to the MS4;
- b) Prohibit illicit discharges to the MS4;
- c) Control the discharge of spills and the dumping or disposal of materials other than stormwater (e.g. industrial and commercial wastes, trash, used motor vehicle fluids, leaf litter, grass clippings, animal wastes, etc.) into the MS4;
- d) Require compliance with conditions in ordinances, permits, contracts, inter-jurisdictional agreements, or orders; and,
- e) Carry out all inspections, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the MS4.

The permittee shall review and update its ordinances and other legal authorities such as permits, orders, contracts and inter-jurisdictional agreements as necessary to continue providing adequate legal authority to control discharges to and from the MS4.

# 4. MS4 Program Resources

The permittee shall include a copy of each fiscal year's budget including its proposed capital and operation and maintenance expenditures necessary to accomplish the activities required by this permit. The permittee shall describe its method of funding the stormwater program with the copy of the fiscal year budget.

## SPECIFIC REPORTING REQUIREMENTS:

 A copy of each fiscal year's budget including its proposed capital and operation and maintenance expenditures necessary to accomplish the activities required by this permit shall be submitted with each annual report.

#### 5. Permit Maintenance Fees

Permit maintenance fees shall be paid in accordance with Part XIII of the Virginia Stormwater Permitting Program regulations (4 VAC 50-60-700 et seq.).

 A statement regarding payment of the applicable MS4 permit maintenance fee, including check date and check number shall be included with each annual report. Note: Please do not include copies of checks or other bank records.

# 6. MS4 Program Plan

The permittee shall maintain, implement and enforce an MS4 Program Plan accurately documenting the MS4 Program including all additions, changes and modifications. For the purposes of this permit, the MS4 Program Plan is considered a single document, but may actually consist of separate documents (e.g., dry weather screening plans, wet weather monitoring plans, TMDL Action Plans, annual reports). Policies, ordinances, strategies, checklists, watershed plans and other documents may be incorporated by referenced provided that the latest revision date is included in the MS4 Program Plan and all documents are available upon request. Specific reference shall be made to any ordinance more stringent than the VSMP Program regulations (4VAC 50-60-10 et. seq.), the Virginia Erosion and Sediment Control Law (§ 10.1-561 et. seq.) and Regulations (4 VAC 50-30-10 et.seq.) and the Chesapeake Bay Preservation Act (§ 10.1-2100 et. seq.).

Approvable updates to the MS4 program plan shall be submitted to, reviewed and accepted by the department in accordance with the due dates established by this permit. The MS4 Program Plan shall become effective and enforceable upon written approval from the Department.

The most recent MS4 Program Plan shall be made accessible to the public and shall be posted on the permittee's website.

#### SPECIFIC REPORTING REQUIREMENTS:

- Utilizing the fiscal year 2013 annual report as a baseline, the permittee's 2014 annual report submitted under this permit (Initial Report) shall include the necessary updates to describe implementation of this permit and meet the conditions described in this section.
- NOTE: For purposes of the next permit cycle, the fourth annual report submitted under this permit will be considered the updated MS4 Program Plan to be reviewed as part of permit reissuance.

## 7. MS4 Program Review and Updates

**MS4 Program Review:** The permittee will review the current MS4 Program annually, in conjunction with the preparation of the annual report required under Part I.E of this permit.

## a) MS4 Program Updates and Modifications:

Modifications to the MS4 Program are expected throughout the life of this permit as part of the iterative process to reduce pollutant loading and protect water quality. As such, modifications made in accordance with this permit as a result of the iterative process do not require modification of this permit unless the Department determines the changes meet the criteria referenced in 4VAC50-60-630 or 4VAC50-60-650.

Updates and modifications to the MS4 Program may be made during the life of the permit in accordance with the following procedures:

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- Adding (but not eliminating or replacing) components, controls, or requirements to the MS4 Program may be made by the permittee at any time. Additions shall be reported as part of the annual report.
- Updates and modifications to specific standards and specifications, schedules, operating procedures, ordinances, manuals, checklists and other documents routinely evaluated and modified are authorized under this permit provided that the updates and modifications are performed in a manner that is (i) consistent with the conditions of this permit, (ii) public notice and participation requirements established in this permit, and (iii) are documented in the annual report.
- 3) Replacing, or eliminating without replacement, any ineffective or infeasible strategies, policies and Best Management Practices specifically identified in this permit with alternate strategies, policies and Best Management Practices (BMP) may be requested at any time. Such requests shall include the following:
  - (a) An analysis of how and / or why the BMPs, strategies or policies are ineffective or infeasible including information on whether the BMPs, strategies, or policies are cost prohibitive;
  - (b) Expectations regarding the effectiveness of the replacement BMPs, strategies or policies;
  - (c) An analysis of how the replacement BMPs are expected to achieve the goals of the BMPs to be replaced;
  - (d) A schedule for implementing the replacement BMPs, strategies and policies;
  - (e) An analysis of how the replacement strategies and policies are expected to improve the permittee's ability to meet the goals of the strategies and policies being replaced; and,
  - (f) Requests or notifications shall be made in writing to the Department and signed in accordance with 4VAC 50-60-370 of the VSMP Permit Regulations, and shall be sent by Certified Mail. Modification to the MS4 Program Plan shall become effective upon written approval from the Department. Major modifications to the MS4 Program Plan as defined in 4VAC 50-60-10 may require that the permit be reopened and modified pursuant to 4VAC50-60-630.

# b) MS4 Program Updates Requested by the Department of Conservation and Recreation:

In a manner and following procedures in accordance with the Virginia Administrative Processes Act, the Virginia Stormwater Management Permit regulations and other applicable State laws, statutes and regulations, the Department may request changes to the MS4 Program to assure compliance with the statutory requirements of the Virginia Stormwater Management Act and associated regulations and to:

- 1) Address impacts on receiving water quality caused by discharges from the MS4;
- 2) Include more stringent requirements necessary to comply with new State or Federal statutory or regulatory requirements; or

3) Include such other conditions necessary to comply with State or Federal statutory or regulatory requirements:

Proposed changes requested by the Department shall be made in writing and set forth the basis for and objective of the modification as well as the proposed time schedule for the permittee to develop and implement the modification. The permittee may propose alternative program modifications and/or time schedules to meet the objective of the requested modification, but any such modifications are at the discretion of the Department.

## SPECIFIC REPORTING REQUIREMENTS:

 All modifications and proposed modifications shall be reported in accordance with this section of the permit.

#### **B. STORMWATER MANAGEMENT**

The following subparts describe the requirements for the permittee to implement in its MS4 Program during this permit term:

# 1. Planning

The permittee shall complete the Stream Assessment and Watershed Retrofit planning components of its Stormwater Master Plan by December 31, 2013. The watershed retrofit plans shall evaluate and prioritize retrofit opportunities within the public right-of-way and on County properties.

The permittee shall continue to seek public comment in development of the updated plan. A copy of the completed plan shall be placed on the permittee's website.

#### **SPECIFIC REPORTING REQUIREMENTS:**

The permittee shall provide the Department a web link to the stream assessment and watershed retrofit planning components of the updated Stormwater Master Plan on or before December 31, 2013.

# 2. MS4 Program Implementation

# a) Construction Site Runoff

- The permittee shall continue to implement a local erosion and sediment control program to reduce the discharge of pollutants from land disturbing activities that is consistent with the Virginia Erosion and Sediment Control Law and attendant regulations. If through a review of the Erosion and Sediment Control Program by the Department the permittee's program is found not to be consistent with the Virginia Erosion and Sediment Control Laws and Regulations, the permittee shall implement all required items detailed in an approved Corrective Action Agreement (CAA) with the Board in accordance with the schedule in the CAA.
- 2) The permittee shall require erosion and sediment controls in areas identified by the County as erosion impact areas as defined at § 10.1-560 of the Code of Virginia.
- 3) The permittee shall maintain an accurate list of all erosion and sediment controls in the MS4 program plan that are more stringent than those required under 4 VAC 50-30 et seq. that have been adopted by ordinance in accordance with § 10.1-570 of the Code of Virginia.

- 4) On a monthly basis (or in accordance with an alternative schedule provided in writing by the Department), the permittee shall submit to the Department a list of approved land disturbing activities that are 1) greater than or equal to one acre, 2) part of a common plan of development or sale that results in an overall land disturbance that is greater than one acre or 3) a land disturbance greater than 2,500 square feet occurring in a Resource Management Area or Resource Protection Area as defined at 4 VAC 50-90-40. For each land-disturbing activity, the permittee shall submit: the activity's location, total acreage disturbed and land disturber's contact information.
- 5) The permittee shall require that large construction activities and small construction activities as defined at 4 VAC 50-60-10 including municipal construction activities have secured separate VSMP authorizations to discharge stormwater.
- 6) The permittee shall require the implementation of appropriate controls to prevent nonstormwater discharges to the MS4, such as wastewater, concrete washout, fuels and oils, and other illicit discharges identified during land disturbing activity inspections. The discharge of non-stormwater discharges other than those identified in Part I.A.1 through the MS4 is not authorized by this state permit.

- Each annual report shall contain the number of regulated land disturbing activities approved and the total number of acres disturbed.
- Each annual report shall contain the number of inspections conducted and the number and type of each enforcement action taken.
- b) Post Construction Runoff from Areas of New Development and Development on Prior Developed Lands
  - The permittee shall continue enforcement of local ordinances related to the control of stormwater runoff from new development and development on prior developed lands. Local ordinances shall be updated as required by statutory or regulatory requirements in order to remain consistent with Virginia Stormwater Management Program Regulations (4VAC 50-60 et. seq.).
  - 2) The permittee shall maintain and update as necessary a list of all stormwater management controls in the MS4 program plan that are more stringent than those required under 4 VAC 50-60 et seq. that have been adopted by ordinance in accordance with § 10.1-603.7 of the Code of Virginia. The permittee shall continue to approve plans implementing these additional stormwater management controls in areas identified by the County as requiring additional water quality protection under the provisions of the Arlington County Code.
  - Where the permittee has adopted more stringent requirements or implemented a regional or watershed-wide stormwater management plan, it may request, in writing, that the Department consider these requirements as part of its review of state projects within the County's jurisdictional boundaries.

4) The permittee shall continue to require adequate long-term operation and annual maintenance of stormwater management facilities by the responsible party. The permittee shall retain copies of these maintenance instruments for its use.

Should the permittee choose a strategy other than a maintenance agreement to address long term maintenance of stormwater control measures that are designed to treat stormwater runoff solely from the individual residential lot on which they are located, the permittee shall develop a written strategy no later than 12-months after the effective date of this permit. Such a strategy may include periodic inspections, homeowner outreach and education, maintenance agreements or other methods targeted at promoting the long term maintenance of such facilities.

5) Stormwater management facilities shall be tracked in accordance with Part I.C.4.a) of this permit.

#### SPECIFIC REPORTING REQUIREMENTS:

- The initial report shall include the permittee's strategy to address maintenance of stormwater management controls that are designed to treat stormwater runoff solely from the individual residential lot on which they are located.
- By September 1, 2014, the permittee shall submit to the Department a list of all land disturbing projects that qualify under the 'Grandfathering' provision of the VSMP regulations found at 4 VAC 50-60-48.
- Each annual report shall include a summary of actions taken by the permittee to implement statutory and regulatory requirements of the Virginia Stormwater Management Program Regulations.
- Retrofitting on Prior Developed Lands No later than 12-months after the effective date of this permit, the permittee shall identify at least seven (7) retrofit projects from its watershed retrofit plans that will be implemented within the County right-of-way or on specific County properties no later than 60-months after the effective date of this permit. The permittee shall submit a summary of the projects and the schedule for implementation to the Department. The permittee may substitute alternative retrofit projects if opportunity exists provided that similar screening is applied to the substituted project as that in the watershed retrofit plans.

The permittee shall implement tree planting and replacement programs as follows:

- 1) Plant a minimum of 2,000 trees on County parkland and County-owned rights-of-way no later than 60-months after the effective date of this permit.
- 2) Implement a program designed to distribute a minimum of 2,000 trees to private property owners during the term of this permit.

The permittee shall track the number of retrofit projects, type of land use being retrofitted, total acreage retrofitted, total impervious and pervious acreage, and retrofit type by the watershed identified in the retrofit study and location by latitude and longitude in degrees, minutes and seconds.

The permittee shall implement its StormwaterWise Landscapes program to provide costsharing and technical assistance for the installation of small-scale practices to reduce stormwater runoff from private properties. No later than 60-months after the effective date of this permit, the permittee shall have implemented this program at a level funded to accommodate a minimum of 200 potential participants.

## **SPECIFIC REPORTING REQUIREMENTS:**

- Each annual report shall include a list in an electronic format provided to the Department of retrofits completed during the reporting cycle. This list shall include the type of retrofit, total acreage controlled, total impervious and pervious acreage controlled and latitude and longitude.
- Each annual report shall provide a summary of the StormwaterWise program for the year as well as cumulative for the permit cycle, including the program announcement information, the number of applicants, the number of participants selected, the number of participants with completed projects, the number of participants with projects still in progress, and the number of participants who chose not to complete projects. The report shall also include documentation that the annual and cumulative funding for the program is sufficient to accommodate a minimum of 200 potential participants by the end of 60 months after the effective date of the permit.
- Each annual report shall provide the total number of trees planted on County parkland and County-owned rights-of-way during the reporting cycle and cumulative for the permit cycle.
- Each annual report shall include the implementation status of planting trees on private property including the total number of trees distributed to private property owners during the reporting cycle and cumulative for the permit cycle.
- d) **Roadways** County streets, roads, and parking lots maintained by the permittee shall continue to be operated and maintained in a manner to minimize discharge of pollutants, including those pollutants related to deicing or sanding activities.
  - 1) The permittee shall continue to implement its street sweeping program and shall sweep a minimum of 25,000 lane miles during this permit cycle.
  - 2) No later than 36-months after the effective date of this permit, the permittee shall develop and implement written protocols for county road, street, and parking lot maintenance, equipment maintenance and material storage designed to minimize pollutant discharge.

Materials utilized for deicing and sanding activities shall remain covered from precipitation until application.

- The permittee shall include a description of the permittee's street sweeping program
  including the number of lane miles swept each year and the total swept cumulatively
  since permit issuance in each annual report. The permittee shall report the
  associated total tonnage of debris collected annually and cumulatively for the lane
  miles swept.
- The permittee shall include a copy of the written protocols identified in Part I.B.2.d)2) with the next annual report that is due after development of the protocols.

- e) Pesticide, Herbicide, and Fertilizer Application The permittee shall continue to control the discharge of pollutants related to the storage and application of pesticides, herbicides, and fertilizers applied to County rights of way, parks, and other County property, as follows:
  - 1) The permittee shall develop and implement turf and landscape nutrient management plans that have been developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia on all County lands where nutrients are applied to a contiguous area greater than one acre in accordance with the following schedule:
    - (a) No later than 12-months after the effective date of this permit, the permittee shall identify all County lands where nutrients are applied to a contiguous area of more than one acre. A latitude and longitude shall be provided for each such piece of County land.
    - (b) The permittee shall develop and implement turf and landscape nutrient management plans on all County lands where nutrients are applied to a contiguous area of more than one acre. The following measurable goals are established for the development and implementation of turf and landscape nutrient management plans.
      - (1) No later than 24-months after the effective date of this permit, not less than 15% of all identified acres will be covered by turf and landscape nutrient management plans.
      - (2) No later than 36-months after the effective date of this permit, not less than 40% of all identified acres will be covered by turf and landscape nutrient management plans.
      - (3) No later than 48-months after the effective date of this permit, not less than 75% of all identified acres will be covered by turf and landscape nutrient management plans.
    - (c) The permittee shall annually track the following:
      - (1) The total acreage of County lands upon which nutrients are applied and controlled using general County guidelines or standard operating procedures;
      - (2) The acreage of County lands where turf and landscape nutrient management plans are required; and,
      - (3) The acreage of County lands upon which turf and landscape nutrient management plans have been implemented.
  - 2) The permittee shall continue to employ good housekeeping / pollution prevention measures in the application, storage, transport and disposal of pesticides, herbicides and fertilizers.
  - 3) The permittee may regulate the use, application, or storage of fertilizers pursuant to § 3.2-3602 of the Code of Virginia.
  - 4) The permittee shall not apply any deicing agent containing urea or other forms of nitrogen or phosphorus to parking lots, roadways, and sidewalks or other paved surfaces.
  - 5) The permittee shall track the acreage of county lands managed under Integrated Pest Management Plans.

- The initial report shall contain a list of all County lands and applicable acreage on which nutrients are applied to more than one contiguous acre.
- Each annual report shall report on compliance with the turf and landscape nutrient management plan implementation schedule and include a list of the County properties for which turf and landscape nutrient management plans have been implemented during the reporting year and the cumulative total of acreage under turf and landscape nutrient management plans.
- Each annual report shall include the number of acres managed under Integrated Pest Management Plans.
- f) *Illicit Discharges and Improper Disposal* Discharges to the MS4 unauthorized by this permit shall be effectively prohibited.
  - 1) In accordance with Part I.A.1.b), certain non-stormwater discharges to the MS4 need not be addressed as illicit discharges or improper disposal. The MS4 Program shall identify any non-stormwater discharges listed under Part I.A.1.b), where the permittee has imposed any conditions on the discharges to the MS4. The permittee shall prohibit, on a case-by-case basis, any individual non-stormwater discharge (or class of non-stormwater discharges) otherwise allowed under this paragraph that is determined to be contributing significant amounts of pollutants to the MS4.
  - 2) The permittee shall limit the infiltration of seepage from sanitary sewers into the MS4.
    - The permittee shall inspect a minimum of 300,000 linear feet of sanitary sewer during this permit cycle.
  - 3) The permittee will continue to implement a program to reduce the discharge of floatables (e.g. litter and other human-generated solid refuse).
  - 4) The permittee shall prohibit the dumping or disposal of used motor vehicle fluids, household hazardous wastes, sanitary sewage, grass clippings, leaf litter, and animal wastes into separate storm sewers. The permittee shall ensure the implementation of programs to collect used motor vehicle fluids (such as oil and antifreeze) for recycling, reuse, or proper disposal and to collect household hazardous waste materials (including paint, solvents, pesticides, herbicides, and other hazardous materials) for recycling, reuse, or proper disposal. Such programs shall be readily available to all private residents and shall be publicized and promoted on a regular basis not less than twice per year.
  - 5) The permittee shall continue to implement a program to locate and eliminate illicit discharges and improper disposal into the MS4. This program shall include dry weather screening activities to locate portions of the MS4 with suspected illicit discharges and improper disposal, as described in Part I.B.2.m)1) of this permit.
  - 6) The permittee shall require the elimination of illicit discharges and improper disposal practices within 30-days of discovery. Where elimination of an illicit discharge within 30days is not possible, the permittee shall require an expeditious schedule for removal of the discharge. In the interim, the permittee shall require the operator of the illicit discharge to take all reasonable and prudent measures to minimize the discharge of pollutants to the MS4.

- Each annual report shall include a list of illicit discharges identified, the source, a description of follow-up activities and whether the illicit discharge has been eliminated.
- g) **Spill Prevention and Response** The permittee shall continue to implement its program that coordinates Fire Department and other County staff resources to prevent, contain, and respond to spills that may discharge into the MS4. The spill response program may include a combination of spill response actions by the permittee (and/or another public or private entity), and legal requirements for private entities within the permittee's jurisdiction. The permittee shall continue to implement the Trades Center Integrated Spill Prevention, Control, and Countermeasures / Hazardous Material Management Plan.

- Each annual report shall include a list of spills, the source, and a description of follow-up activities taken.
- h) Industrial & High Risk Runoff The permittee shall implement a program to identify and control pollutants in stormwater discharges to the MS4 from industrial and high risk runoff facilities (e.g., municipal landfills; other treatment, storage, or disposal facilities for municipal waste; hazardous waste treatment, storage, disposal and recovery facilities; facilities that are subject to EPCRA Title III, Section 313) and any other industrial or commercial discharges the permittee determines are contributing a significant pollutant loading to the MS4.
  - The permittee shall maintain, and update as necessary, a list of all known industrial and high-risk dischargers to the MS4. This list will include facilities with VPDES industrial stormwater permits and industrial stormwater facilities granted "no-exposure" certification by DEQ.
  - 2) No later than 12-months after the effective date of this permit, the permittee shall develop and implement a prioritized schedule and procedures to inspect outfalls of facilities with VPDES industrial stormwater permits and facilities granted "no-exposure" certification at the point of connection to the MS4. Prioritization may be based on historical discharges, local water quality impairments, industrial category or other method selected by the permittee. The permittee shall inspect all industrial outfalls connected to its MS4 a minimum of once every five years.
  - 3) The permittee shall review copies of all discharge monitoring reports (DMRs) submitted to the permittee by all facilities with VPDES industrial stormwater permits as part of the permittee's investigations of significant pollutant loadings. The permittee may conduct additional monitoring, or may require the facility to conduct additional monitoring, of any stormwater discharges it believes may be a source of significant pollutant loadings.
  - 4) The permittee shall coordinate with DEQ on any non-VPDES-permitted industrial facility for which it has evidence that a significant pollutant load is entering the MS4 system. Inspections of facilities for which the permittee has evidence of substantial pollutant loading may be carried out in conjunction with other county programs (e.g., pretreatment inspections of industrial users, health inspections, fire inspections, etc.), but shall include inspections for facilities not normally visited by the permittee.

- 5) The permittee shall refer the following facilities to the Department of Environmental Quality, Northern Regional Office, for DEQ compliance review under the Virginia State Water Control Law:
  - (a) Facilities and operations having non-stormwater discharges that do not have coverage under an existing VPDES permit;
  - (b) Facilities and operations identified pursuant to 40 CFR Part 122.26(b)(14) with manufacturing, processing, or raw materials storage outside that do not have coverage under an existing VPDES industrial stormwater permit.
  - (c) Any VPDES industrial stormwater permit facility where there is evidence of significant pollutant loadings to the MS4 as determined by a continued or regular exceedence of effluent limitations or benchmarks demonstrated by monitoring conducted as a requirement of the VPDES permit.
  - (d) Facilities that do not submit signed copies of DMRs to the permittee as required under a VPDES industrial stormwater permit.
- 6) The permittee shall maintain a list of any industrial and/or commercial stormwater dischargers not regulated under the Virginia State Water Control Law that it determines may be contributing a significant pollutant loading to the MS4. This list may be individual discharges or categories of discharges.
  - (a) Outfalls from these facilities shall be included in the prioritized inspection schedule.
  - (b) The list shall include, but not be limited to, major automotive facilities such as repair shops, body shops, auto detailers, tire repair shops and service stations.
  - (c) The permittee shall require control measures as necessary and/or appropriate for stormwater discharges from these dischargers.

- The initial report shall include a list of all known industrial and high risk dischargers including any non-VPDES regulated industrial and commercial stormwater dischargers determined by the permittee as contributing a significant pollutant load and that discharge to the MS4 system, a schedule of inspections and procedures for inspecting outfalls.
- Each annual report shall report on implementation of the inspection schedule and include a list of the facilities inspected during the reporting period.
- Each annual report shall include a document listing DEQ coordination activities.
- i) Storm Sewer Infrastructure Management The permittee shall continue to maintain and implement programs to maintain the County's stormwater infrastructure and to update the accuracy and inventory of the storm sewer system.
  - The permittee shall continue its stormwater infrastructure inspection inventory, reinvestment, and rehabilitation program in order to protect the integrity and performance of the existing stormwater drainage system. All wastes and wastewaters collected during

- catch basin cleaning shall be disposed in accordance with appropriate laws and regulations.
- 2) The permittee shall continue its catch basin cleaning program and shall inspect 5,000 catch basins over the life of this permit. The permittee shall conduct maintenance, as necessary, based upon the inspection's findings.
- 3) The permittee shall continue its storm sewer inspection program and shall inspect 425,000 linear feet of system during the term of this permit as described in Part I.B.2.m).
- 4) A total of thirty-five outfalls scored a 4 or 5 on a severity scale during the County-wide stream assessment. No later than 60 months after the effective date of this permit, the permittee shall complete a pilot project designed to explore how to overcome access issues and to conduct maintenance on three of these identified outfalls associated with the Windy Run and Donaldson Run stream restoration projects. The pilot project will explore aspects of maintenance where barriers are encountered, such as physical and legal constraints to obtain access. As part of the pilot project, the permittee will document where efforts to overcome such barriers are successful or unsuccessful. The County shall submit the results of the pilot project with the applicable annual report. The results of this pilot project should be incorporated into future stream restoration efforts.
- 5) No later than 60 months after the effective date of this permit, the permittee shall summarize the private property and physical access constraints for the remaining outfalls and strategies to perform such maintenance, including possibly in conjunction with the permittee's voluntary long-term stream restoration program. This report shall be submitted with the applicable annual report.
- 6) The permittee shall track the following for each MS4 outfall:
  - (a) An individual identification number, its Arlington County local watershed, sixth order HUC and receiving water;
  - (b) The latitude and longitude in degrees, minutes and seconds; and
  - (c) New outfalls shall be tracked upon their construction.
- 7) In conjunction with the special condition found in Part I.D.1, the permittee shall identify the following for each Arlington County local watershed, sixth order HUC and Chesapeake Bay Segment:
  - (a) The number of impervious, pervious and total acres served by the MS4 as of June 30, 2009; and
  - (b) The number of impervious, pervious and total acres treated by stormwater controls as of June 30, 2009.
- 8) No later than 54 months of the effective of this permit, the permittee shall update each of the following:
  - (a) The number of impervious, pervious and total acres served by the MS4 for each Arlington County local watershed, HUC and Chesapeake Bay segment; and
  - (b) The number of impervious, pervious and total acres treated by stormwater controls.

Note: Acreage from any physically interconnected regulated MS4 shall be excluded from the permittee's delineation of its MS4 service areas.

- Each annual report shall include a progress report on efforts to repair failed storm sewer outfalls included in Part I.B.2.i)5).
- Each annual report shall include the number of catch basins inspected and maintained and the linear feet of storm sewers inspected.
- The information required by Part I.B.2.i)6) shall be maintained electronically in a spreadsheet format and made available to the Department upon request.
- The second annual report submitted under this permit shall include the information included in Part I.B.2.i)7). The information shall be submitted electronically in a spreadsheet format..
- Each following annual report shall include an updated list in excel or Department provided format of all information requested in Part I.B.2.i)8).
- j) County Facilities County facilities shall be operated and maintained as follows:
  - 1) Good Housekeeping
    - (a) The discharge of county vehicle wash water into the MS4 at county facilities without authorization from a separate VPDES permit shall be prohibited.
    - (b) The discharge of wastewater into the MS4 at county facilities without authorization by a separate VPDES permit shall be prohibited.
    - (c) The dumping of yard waste and grass clippings into the MS4 shall be prohibited.
    - (d) Fluids leaked from municipal vehicles and equipment shall be prevented from entering the storm sewer system. Leaked fluids shall be cleaned up and disposed of properly, as soon as possible but no later than 24-hours after discovery.
    - (e) No later than 60-months after the effective date of this permit, the permittee shall install and maintain markings on all stormwater inlets located on high priority municipal facilities, as defined at Part I.F, and on County properties with greater than 2-acres of impervious surface.
  - High Priority Municipal Facilities
    - (a) The permittee shall continue to implement the stormwater pollution prevention plan for the Arlington County Trades Center.
    - (b) The permittee shall identify all additional high priority municipal facilities that do not require a separate VPDES industrial stormwater permit no later than 12-months after the effective date of this permit;
    - (c) The permittee shall develop and implement individual stormwater pollution prevention

plans for each high-priority municipal facility identified under Part I.B.2.j)2)(b) no later than 36-months after the effective date of this permit. Stormwater pollution prevention plans (SWPPP) shall include:

- (1) A site description that includes a site map identifying all outfalls, direction of flows, existing source controls and receiving water bodies;
- (2) A discussion and checklist of potential pollutants and pollutant sources;
- (3) A discussion of all potential non-stormwater discharges;
- (4) A maintenance schedule for all existing source controls;
- (5) All policies and procedures implemented at the facility to ensure source reduction;
- (6) An inspection schedule and checklist to ensure that all source reductions are continually implemented and all source controls are appropriately maintained. The date of each inspection and associated findings and follow-up shall be logged in each SWPPP;
- (7) Appropriate training as required in Part I.B.2.I);
- (8) Procedures to conduct an annual comprehensive site compliance evaluation;
- (9) Procedures to conduct annual outfall field screening; and,
- (10) All modifications made as the result of any release or spill.
- (d) A copy of each SWPPP shall be kept at each high-priority municipal facility and be kept up to date.

- The initial annual report shall include a list of all high priority municipal facilities.
- k) Public Education/Participation The permittee shall continue to implement a public education and outreach program with the goal of increasing the stormwater knowledge of target audiences and changing behavior to result in pollutant reductions. The permittee may fulfill all or part of the requirements of this permit through regional outreach programs involving two or more MS4 localities.
  - The permittee shall identify, schedule, implement, evaluate and modify, as necessary, public outreach activities designed to meet the following public education and outreach measurable goals:
    - i. Promote, publicize, and facilitate public reporting of the presence of illicit discharges or improper disposal of materials into the MS4;
    - ii. Continue to promote individual and group involvement in local water quality improvement initiatives including the promotion of local restoration and clean-up projects, programs, groups, meetings and other opportunities for public involvement;

- iii. Promote, publicize, and facilitate the proper management and disposal of used oil and household hazardous wastes;
- iv. Promote, publicize and facilitate the proper disposal of pet waste and household yard waste:
- v. Promote, publicize and facilitate the use of the county's recycling program;
- vi. Promote, publicize and facilitate methods for residential car washing that minimize water quality impacts;
- vii. Promote, publicize, and facilitate the proper use, application, and disposal of pesticides, herbicides, and fertilizers by public, commercial, and private applicators and distributors:
- viii. Encourage private property owners to implement retrofits including those described in Part I.B.2.c); and,
- ix. Target strategies towards local groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts.
- 2) The permittee shall post a copy of this permit on its website no later than 30-days after the effective date of this permit and continue to retain a copy of the permit online for the duration of this permit.
- 3) The permittee shall post copies of each annual report on its website no later than 30 after the report submittal to the Department and continue to retain copies of the annual reports on-line for the duration of this permit.
- 4) The permittee shall make available for public review the most current MS4 Program Plan upon request of interested parties in compliance with all applicable open records requirements.

- Each annual report shall include a list of permittee public outreach and education activities and the estimated number of individuals reached through the activities.
- Each annual report shall provide a summary of voluntary retrofits completed on private property.
- I) Training The permittee shall conduct stormwater training for county employees. The training requirement may be fulfilled all or in part through regional training programs involving two or more MS4 localities; provided, however, that the permittee shall remain individually liable for its failure to comply with the training requirements in this permit. The permittee shall determine the appropriate employees to receive the following types of training based on the specific topic for which training is to be provided:
  - 1) The permittee shall provide annual training to applicable field personnel in the recognition and reporting of illicit discharges.

- 2) The permittee shall provide annual training to applicable employees in good housekeeping and pollution prevention practices that are to be employed during road, street, and parking lot maintenance.
- 3) The permittee shall provide annual training to applicable employees in good housekeeping and pollution prevention practices that are to be employed in and around county maintenance and public works facilities.
- 4) The permittee shall ensure that employees, and require that contractors, who apply pesticides and herbicides are properly trained or certified per the Virginia Pesticide Control Act (§3.2-3900et seq. of the Code of Virginia). The requirements of the Virginia Pesticide Control Act are established by the Virginia Pesticide Control Board.
- 5) The permittee shall ensure that County employees employed as plan reviewers, inspectors, program administrators and construction site operators are trained and obtain the appropriate certifications to the extent required under the Virginia Erosion and Sediment Control Law and attendant regulations.
- 6) The permittee shall ensure that the applicable County employees obtain the appropriate certifications as required under the Virginia Erosion and Sediment Control Law and its attendant regulations to implement the modified stormwater management design criteria.
- 7) The permittee shall provide annual training to applicable employees in good housekeeping and pollution prevention practices that are to be employed in and around county recreation facilities.
- 8) The appropriate emergency response employees shall have training in spill response. A summary of the training/certification program provided to emergency response employees shall be included in the first annual report.
- 9) Documentation shall be kept of all training events including the training date, number of employees attending the training, and the objective of the training event for a period of three years after each training event. Additionally, all events shall be listed in the annual report for the year in which the training event occurred.

- Each annual report shall include a list of training events, the date and the estimated number of individuals attending each event.
- The initial report shall include documentation of employee emergency response spill response training/certification.
- m) Water Quality Screening Programs The following screening programs shall be implemented in addition to the monitoring required by Part I.C:
  - Dry Weather Screening Program: The permittee shall continue ongoing efforts to detect
    the presence of illicit connections and unauthorized discharges to the MS4. The permittee
    shall conduct the following screening activities during this permit term:
    - (a) Annual inspection of an average of 85,000 linear feet of the piped stormwater system using CCTV;

- (b) Continued monthly bacteria sampling at eleven (11) locations within the Four Mile Run watershed as described in Part I.C.1.a);
- (c) Targeted bacteria sampling in at least 3 additional watersheds as described in Part I.C. 2.b);
- (d) Annual screening of all outfalls that drain the Shirlington commercial district and the South Four Mile Run Drive industrial area. Screening methodology may be modified based on experience gained during actual field screening activities and need not conform to the protocol at 40 CFR Part 122.26(d)(1)(iv)(D). Where the sample analysis does not include analytical methods approved under 40 CFR Part 136, the permittee may use any suitable method but shall provide a description of the method used. Dry weather screening procedures shall be documented in the MS4 Program Plan.
- Wet Weather Screening Program: The permittee shall investigate, and address known areas within its jurisdiction that are contributing excessive levels of pollutants including floatables to the MS4.
  - (a) No later than 12-months after the effective date of this permit, the permittee shall identify a prioritized list of areas thought to contribute significant pollutant loads during wet weather events and develop a wet weather screening plan for two areas to determine the contribution.
  - (b) No later than 18-months after the effective date of this permit, the permittee shall implement the wet weather screening plan.

- The initial report shall include the procedures and methodologies and an annual schedule for conducting dry weather screening for the Shirlington commercial district and the South Four Mile Run Drive industrial area.
- The initial report shall include the procedures and methodologies and an annual schedule for conducting wet weather screening.
- Each annual report shall include a list of locations upon which dry weather screening was conducted, the results and any follow-up actions taken as a result of the dry weather screening.
- Each annual report shall include a list of locations upon which wet weather screening was conducted, the results and any follow-up actions taken as a result of the wet weather screening.

## C. MONITORING REQUIREMENTS

## 1. Bacteriological Monitoring

- a) Four-Mile Run Watershed The permittee shall continue its long term Four-Mile Run bacteriological monitoring activities to evaluate the effectiveness of its efforts to reduce bacterial pollutant loadings. This program shall continue to be implemented as follows:
  - 1) The permittee shall use the Coliscan EasyGel method to analyze in-stream E. coli

concentrations.

2) The permittee shall collect monthly samples at each of the following locations in Four-Mile Run identified in Table A:

Table A: Four-Mile Run Bacteriological Monitoring Locations, Arlington County

Site #	General Location	Watershed Location
1	Benjamin Banneker Park, below Van Buren St.	Upper Four-Mile Run
2	East Fall Church Park (N. Roosevelt Street)	Upper Four-Mile Run
3	Bluemont Park	Below conf of small trib. from I-66
4	Glencarlyn Park, near N. Carlin Springs Road	Above conf. of Lubber Run Tributary
5	Glencarlyn Park	Below conf. of Lubber Run Tributary
6	Glencarlyn Park	Upper Long Branch above dog park
7	Glencarlyn Park	Below conf. of Upper Long Branch
8	Glencarlyn Park	Below conf. w/ small trib. at 7th Street
9	Barcroft Park	Below conf. w/ Doctor's Branch
10	Troy Park	Lower Long Branch Tributary
11	Mt. Vernon Ave. bridge	Lower Four Mile Run

- 3) The permittee may rely on community volunteers to conduct bacteriological monitoring.
- 4) The permittee shall analyze the data for relationships with precipitation events including recent (occurred within 24-hours of sampling) and long term (total monthly precipitation).
- 5) The permittee shall review the monitoring results to determine long term trends.
- 6) The permittee shall look for relationships between average *E. coli* concentration and sanitary capital and operational maintenance projects.
- b) Additional Watersheds The permittee shall develop bacteriological monitoring efforts for three additional watersheds in which bacteriological impairments exist within its jurisdictional limits. The permittee shall:
  - 1) No later than 12-months after the effective date of this permit, select the three watersheds and the monitoring locations;
  - 2) No later than 12-months after the effective date of this permit, develop the monitoring procedures using the Four Mile Run effort as a template; and,
  - 3) No later than 18-months after the effective date of this permit, the permittee shall implement the monitoring procedures in Part I.C.1.b)2).

- The initial report shall include a list of the selected watersheds and monitoring locations and a copy of the monitoring procedures to be utilized in monitoring the selected watersheds.
- The annual report shall include a summary of the monitoring results.

- 2. <u>Biological Stream Monitoring</u> The permittee shall continue its biological stream monitoring program to evaluate the health of existing streams and the long term effectiveness of its stormwater management program. With the application for permit reissuance, the permittee shall provide a detailed analysis of any long-term trends in local stream health identified during this permit. This program shall continue to be implemented as follows:
  - a) The permittee shall use a biological stream monitoring protocol based on EPA's Rapid Bioassessment Protocol 2 and shall include habitat assessment, temperature and pH measurements, and an assessment of the benthic macroinvertebrate community. The developed protocol shall be available on the permittee's website.
  - b) Monitoring shall be conducted a minimum of twice per year with sampling events occurring between January 1<sup>st</sup> and June 30<sup>th</sup> and July 1<sup>st</sup> and December 31<sup>st</sup> at each monitoring location.
  - c) Monitoring shall continue at the following locations listed in Table B.

Table B: Biological Stream Monitoring Locations, Arlington County

Stream	Land Use	Location	
Windy Run	Residential	End of Kenmore Street	
Donaldson Run	Residential	30 <sup>th</sup> Road	
Gulf Branch	Residential	Military Road	
Little Pimmit Run	Residential	38 <sup>th</sup> and Dumbarton	
Four-Mile Run-Banneker	Residential Transitioning to Heavily Urban	Banneker Park	
Four-Mile Run-Bluemont	Residential Transitioning to Heavily Urban	Bluemont Park	
Four-Mile Run-Glencarlyn	Residential Transitioning to Heavily Urban	Glencarlyn Park	
Four-Mile Run-Barcroft	Residential Transitioning to Heavily Urban	Barcroft Park	
Lubber Run	Residential Transitioning to Heavily Urban	Lubber Run Park	
Margaret Creek	Reference Site	Clifton, VA	

- d) The permittee may rely on community volunteers to conduct biological stream monitoring provided each volunteer has attended two training events. Documentation of volunteer training shall be kept on file for review.
- e) The permittee shall obtain all necessary aquatic wildlife collection permits from appropriate State and/or Federal agencies.

- The annual report shall include a summary of the monitoring results and analyses and an interpretation of that data with respect to long-term patterns/trends.
- 3. <u>Floatables Monitoring</u> The permittee shall continue to conduct surveys of floatables. The intent of the surveys is to document the effectiveness of the litter control programs for the MS4 and may be accomplished through a volunteer program. Surveys shall be performed in accordance with the following procedures:
  - a) Select representative sampling sites in ditches, streams, or channels that discharge to or receive drainage from the MS4. Visually count all floatable material (excluding natural vegetation), trash, and refuse (e.g.: plastic trash bags, bottles, car batteries, shopping carts, etc.) located in the sampling site, visible on the channel bottom, along banks (up to high water mark), or suspended in vegetation located in the sample site. Sites shall be at least 100 feet in length, and sampled during or before any litter pickup.

- b) The permittee shall maintain the following records and include a summary of results and trends in each annual report: location of the sample site, total site "counts", and months since the last trash and floatables pick-up from the sampled section.
- c) The permittee shall provide a detailed analysis with the application for permit reissuance on any long-term trends identified during this permit cycle including any significant differences found between BMP treatments.

• The annual report shall include a summary of the monitoring results and analyses.

# 4. Structural and Source Controls Compliance Monitoring and Tracking

a) The permittee shall maintain an updated electronic database of all known County owned and privately owned stormwater management (SWM) facilities.

The database shall include the following:

- 1) The SWM facility type, address, and latitude and longitude;
- 2) The acres treated by the SWM facility including total acres, as well as pervious and impervious acres;
- 3) The date brought on line (MMYYYY). If the date is unknown, the permittee shall use June 30, 2005 as the date brought on line for all previously existing SWM facilities;
- 4) The sixth order hydrologic unit code (HUC) in which the SWM facility is located;
- 5) The name of any impaired water segments within each HUC listed on the most recent 305(b)/303(d) Water Quality Assessment Integrated Report to which the SWM facility discharges;
- 6) Whether the SWM facility is county owned or privately owned;
- 7) Whether the SWM facility discharges into the MS4;
- 8) Whether a maintenance agreement exists if the SWM is privately owned; and,
- 9) The date of last inspection.

An electronic database or spreadsheet of all known SWM facilities brought on line during each reporting year shall be submitted with the appropriate annual report. Upon such time as the Department provides the permittee access to a statewide web-based reporting database, the permittee shall utilize such database to complete the reporting requirements of this permit.

No later than 36-months of the effective date of this permit, the database shall be updated to include the required information for SWM facilities known to exist prior to issuance of this permit. The updated information shall be submitted in electronic format with the fourth annual report.

- b) The permittee shall send notice to privately owned SWM facility owners reminding them of their inspection and maintenance requirements under their recorded inspection schedule and maintenance agreements. The permittee shall inspect at least once during this permit cycle all SWM facilities where the owner has failed at least twice to submit an annual inspection report. The permittee shall inspect at least once during this permit cycle a random subset of 10 percent of those SWM facilities whose owner's have submitted an annual inspection report.
- c) Beginning with the effective date of this permit, maintenance agreements may be used but are not required for stormwater control measures that are designed to treat stormwater runoff solely from the individual residential lot on which they are located provided that the permittee has developed and implemented a strategy to address maintenance of such stormwater management controls. Should the permittee choose a strategy other than a maintenance agreement, such a strategy shall be in writing no later than 12 months after the effective date of this permit and may include periodic inspections, homeowner outreach and education, or other methods targeted at promoting the long term maintenance of such facilities.
- d) For SWM facilities owned by the permittee, the following conditions apply:
  - 1) The permittee shall provide for adequate long-term operation and maintenance of its stormwater management facilities in accordance with written inspection and maintenance procedures included in the MS4 Program Plan.
  - 2) The permittee shall inspect these stormwater management facilities annually. The permittee may choose to implement an alternative schedule to inspect these stormwater management facilities based on facility type and expected maintenance needs provided that the alternative schedule is included in the MS4 Program Plan.
  - 3) The permittee shall conduct maintenance on its stormwater management facilities as necessary.
- e) Facilities that provide peak flow control as required under Chapter 60 of the Arlington County Code are excluded from the requirements of this section. Inspection and maintenance requirements for these facilities shall be governed by Chapter 60.

- Each annual report shall include a copy of the updated database in electronic format.
- Each annual report shall include a summary of the program to ensure maintenance of private stormwater management facilities.
- Each annual report shall include a summary of the program to ensure maintenance of stormwater management facilities owned by the permittee.
- The third annual report submitted under this permit shall include an updated list of stormwater management facilities existing prior to issuance of this permit.

## D. TMDL ACTION PLAN AND IMPLEMENTATION

# 1. Chesapeake Bay Special Condition

The Commonwealth in its Phase I and Phase II Chesapeake Bay TMDL Watershed Implementation Plans (WIP) committed to a phased approach for MS4s affording MS4s permittees up to three full five-year permit cycles to implement necessary reductions. This permit is consistent with the Chesapeake Bay TMDL and the Virginia Phase I and II WIPs to meet the Level 2 (L2) scoping run for existing developed lands as it represents an implementation of 5.0% of L2 as specified in the 2010 Phase I WIP. Conditions of future permits will be consistent with the TMDL or WIP conditions in place at the time of permit issuance.

- a) *Definitions* The following definitions apply to this permit for the purpose of the Special Condition for Discharges in the Chesapeake Bay Watershed:
  - 1) "Existing Sources" means pervious and impervious urban land uses served by the MS4 as of June 30, 2009.
  - 2) "New Sources" means pervious and impervious urban land uses served by the MS4 developed or redeveloped on or after July 1, 2009.
  - 3) "Transitional Sources" means regulated land disturbing activities which are temporary in nature and discharge through the MS4.
  - 4) "Pollutants of concern" or "POC" means total nitrogen, total phosphorus and total suspended solids.
- b) Chesapeake Bay Watershed TMDL Planning
  - No later than 24-months after the effective date of this permit, the permittee shall develop and submit to the Department for its review and acceptance an approvable phased Chesapeake Bay TMDL Action Plan that includes:
    - (a) A review of the current MS4 program including existing legal authorities and the permittee's ability ensure compliance with this special condition;
    - (b) The identification of any new or modified legal authorities, such as ordinances, permits, orders, contracts and inter-jurisdictional agreements, implemented to meet the requirements of this special condition;
    - (c) The means and methods utilized to address discharges into the MS4 from new sources.
    - (d) An estimate of the annual POC loads discharged from the existing sources as of June 30, 2009 based on the 2009 progress run. The permittee shall utilize Table 1 and multiply the total existing acres served by the MS4 on June 30, 2009 and the 2009 Edge of Stream (EOS) Loading Rate.

Table 1: Calculation Sheet for Estimating Existing Source Loads for the Potomac River Basin
(Based on Chesapeake Bay Program Watershed Model Phase 5.3.2)

<u>Subsource</u>	<u>Pollutant</u>	Total Existing Acres Served by MS4 (6/30/09)	2009 EOS Loading Rate (Ibs/ac)	Estimated Total POC Load Based on 2009 Progress Run
Regulated Urban Impervious	Nitrogon		16.86	
Regulated Urban Pervious	Nitrogen		10.07	
Regulated Urban Impervious	Dhoonhorus		1.62	
Regulated Urban Pervious	Phosphorus		0.41	
Regulated Urban Impervious	Total		1,171.32	
Regulated Urban Pervious	Suspended Solids		175.8	

(e) A determination of the total pollutant load reductions necessary to reduce the annual POC loads from existing sources utilizing Table 2 by multiplying the total existing acres served by the MS4 by the first permit cycle required reduction in loading rate.

Table 2: Calculation Sheet for Determining Total POC Reductions Required During this Permit

Cycle for the Potomac River Basin

(Based on Chesapeake Bay Program Watershed Model Phase 5.3.2)

<u>Subsource</u>	<u>Pollutant</u>	Total Existing Acres Served by MS4 (6/30/09)	First Permit Cycle Requiring Reduction in Loading Rate (Ibs/ac)	Total Reduction Required During First Permit Cycle (lbs)
Regulated Urban Impervious			0.08	
Regulated Urban Pervious	- Nitrogen		0.03	
Regulated Urban Impervious			0.01	
Regulated Urban Pervious	- Phosphorus		0.001	
Regulated Urban Impervious	Total		11.71	
Regulated Urban Pervious	Suspended Solids		0.77	

(f) The means and methods, such as the management practices and retrofit programs that will be utilized to meet the required reductions identified in Part I.D.1.b)1)(e) and a schedule to achieve those reductions. The schedule should include annual benchmarks to demonstrate the ongoing progress in meeting the reductions. The means and methods

- implemented prior to July 1, 2009 shall not be credited towards meeting the required reductions identified in Part I.D.b.1)(e).
- (g) The means and methods to offset the increased loads from new sources initiating construction between July 1, 2009 and June 30, 2014 that disturb one acre or greater as a result of the utilization of an average land cover condition greater than 16% impervious cover for the design of post development stormwater management facilities. The permittee shall utilize Table 3 to develop the equivalent pollutant load for nitrogen and total suspended solids. The permittee shall offset 5.0% of the calculated increased load from these new sources during the permit cycle.
- (h) The means and methods to offset the increase loads from projects as grandfathered in accordance with 4 VAC 50-60-48, that disturb one acre or greater that being constructed after July 1, 2014, where the project utilized an average land cover condition greater than 16% impervious cover in the design of post development stormwater management facilities. The permittee shall utilize Table 3 to develop the equivalent pollutant load for nitrogen and total suspended solids.

Table 3: Ratio of Phosphorus Loading Rate to Nitrogen and Total Suspended Solids Loading Rates for Chesapeake Bay Basins  (Based on Chesapeake Bay Program Watershed Model Phase 5.3.2)				
Ratio of Phosphorus to Other POCs (Based on All Land Uses 2009 Progress Run)	Phosphorus Loading Rate (lbs/ac)	Nitrogen Loading Rate (lbs/ac)	<u>Total</u> <u>Suspended</u> <u>Solids</u> <u>Loading Rate</u> (lbs/ac)	
Potomac River Basin	1.0	6.9	469.2	

- (i) A list of future projects and associated acreage that qualify as grandfathered in accordance with 4 VAC 50-60-48.
- (j) An estimate of the expected cost to implement the necessary reductions of this special condition during the permit cycle;
- (k) An opportunity for receipt and consideration of public comment on the draft Chesapeake Bay TMDL Action Plan; and,
- (I) A list of all comments received as a result of public comment and any modifications made to the draft Chesapeake Bay TMDL Action Plan as a result of the public comments.
- 2) As part of development of the Chesapeake Bay TMDL Action Plan, the permittee shall consider use of the following:
  - (a) Implementation of BMPs on unregulated lands provided any necessary baseline reduction is not included toward meeting the required reduction in this permit;
  - (b) Utilization of stream restoration projects provided the credit applied to the required POC load reduction is prorated based on the ratio of regulated urban acres to total drainage acres upstream of the restored area;
  - (c) Establishment of a memorandum of understanding (MOU) with other MS4 permittees that discharge to the same or adjacent eight digit hydrologic unit within the same basin to

- implement BMPs collectively. The MOU shall include a mechanism for dividing the POC reductions created by BMP implementation between the cooperative MS4s;
- (d) Utilization of any pollutant trading or offset program in accordance with § 10.1-603.15:1 et seq. of the Code of Virginia, governing trading and offsetting;
- (e) A more stringent average land cover condition based on less than 16% impervious cover for new sources initiating construction between July 1, 2009, and June 30, 2014, and all grandfathered projects where allowed by law; and
- (f) Any BMPs installed after June 30, 2009, as part of a retrofit program may be applied towards meeting the required load reductions provided any necessary baseline reductions are not included.
- 3) The permittee shall address any modification to the TMDL or watershed implementation plan that occurs during the term of this permit as part of its permit reapplication as required in Part II.M of this permit.
- 4) The Chesapeake Bay TMDL Action Plan shall become effective and enforceable upon written approval from the Department.
- c) Chesapeake Bay TMDL Action Plan Implementation
  - 1) The permittee shall implement the TMDL action plan required in Part I.D.1.b)1) of this permit according to the schedule therein. Compliance with this requirement represents adequate progress for this permit term towards achieving TMDL wasteload allocations consistent with the assumptions and requirements of the TMDL and shall be included in annual reports subsequent to the submission of the Chesapeake Bay TMDL Action Plan.
  - 2) For the purposes of this permit, the implementation of the following represents implementation to the maximum extent practicable and demonstrates adequate progress:
    - (a) Implementation of turf and landscape nutrient management plans in accordance Part I.B.2.e);
    - (b) Implementation of Part I.B.2.a) in accordance with this permit shall address discharges from transitional sources;
    - (c) Implementation of the means and methods to address discharges from new sources in accordance with Part I.B.2.b) and in order to offset 5.0% of the total increase in POC loads between July 1, 2009 and June 30, 2014. Increases in the POC load from grandfathered projects initiating construction after July 1, 2014 must be offset prior to completion of the project; and,
    - (d) Implementation of means and methods sufficient to meet 5.0% required reductions of POC loads from existing sources defined in this permit in accordance with the Chesapeake Bay TMDL Watershed Implementation Plan.

# d) Annual Reporting Requirements

- 1) In accordance with Part I D.1.b)1), the permittee shall submit the Chesapeake Bay TMDL Action Plan.
- 2) Each subsequent annual report shall included a list of control measures implemented during the reporting period and the cumulative progress toward meeting the compliance targets for total nitrogen, phosphorus, and total suspended soils.
- 3) Each subsequent annual report shall include a list of control measures, in an electronic format provided by the department, that were implemented during the reporting cycle and the estimated reduction achieved by the control. For stormwater management controls, the report shall include the information required in Part I.C.4.a) and shall include whether an existing stormwater management control was retrofitted, and if so, the existing stormwater management control type retrofit used.
- 4) Each annual report shall include a list of control measures that are expected to be implemented during the next reporting period and the expected progress toward meeting the compliance targets for total nitrogen, phosphorus, and total suspended solids.
- 5) The permittee shall include the following as part of its reapplication package due in accordance with Part II.M:
  - (a) Documentation that sufficient control measures have been implemented (or documentation detailing that implementation will be complete by the expiration date of this permit) to meet the compliance target identified in this Special Condition. If temporary credits or offsets have been purchased in order to meet the compliance target, the list of temporary reductions utilized to meet the 5.0% reduction in this permit and a schedule of implementation to ensure a permanent 5.0% reduction must be provided; and,
  - (b) A draft second phase Chesapeake Bay TMDL Action Plan designed to reduce the existing pollutant of concern loads by an additional seven times the required reductions in loading rates using Table 2 of Part I.D.1.b) of this permit unless alternative calculations have been provided by the Commonwealth.
    - i. An additional 35% reduction in new sources developed between 2009 and 2014 and for which the land use cover condition was greater than 16%; and
    - ii. Accounting for any modifications to the applicable loading rate provided to the permittee as a result of TMDL modification.

# 2. TMDL Action Plans Other than the Chesapeake Bay TMDL

# a) TMDL Action Plan Development

The permittee shall maintain an updated MS4 Program Plan that includes TMDL Action Plans for pollutants in which wasteloads have been allocated to the MS4 in approved TMDLs. Approved TMDLs as of the effective date of this permit are included in Attachment A of this permit. TMDL Action Plans may be implemented in multiple phases over more than one permit cycle using the adaptive iterative approach provided adequate progress is made to reduce pollutant discharges in a manner that is consistent with the assumptions and requirements of the applicable TMDL. Progress shall be demonstrated by representative and adequate monitoring or other methods

(e.g. modeling) as described in Part I.D.2.b) 5) below. These TMDL Actions Plans shall identify the best management practices and other interim milestone activities to be implemented during the remaining term of this permit. The plan shall include an estimated end date for achieving the applicable wasteload allocations and, for planning purposes, a projection of BMPs and other implementation steps expected to address the WLA, outside of the permit term, as applicable.

- 1) No later than 24 months after the effective date of this permit, the permittee shall submit to the Department TMDL Action Plans to address any new or modified requirements established under this Special Condition for pollutants identified in TMDL wasteload allocations approved prior to the effective date of this permit.
- 2) The TMDL Action Plans shall become effective and enforceable upon written notification from the Department.
- 3) The TMDL Actions Plans shall be incorporated by reference into this permit.

# b) TMDL Action Plan Content The permittee shall:

- Develop and maintain a list of its legal authorities such as ordinances, permits, order, specific contract language, and inter-jurisdictional agreements applicable to reducing the pollutant identified in a WLA;
- 2) Identify and maintain an updated list of all additional management practices, control techniques and system design and engineering methods, beyond those identified in Part I.B of this permit, that have been implemented as part of the MS4 Program Plan that are applicable to reducing the pollutant identified in the WLA;
- Enhance the public education and outreach and employee training programs to also promote methods to eliminate and reduce discharges of the pollutants identified in the WLA;
- 4) Assess all significant sources of pollutant(s) from facilities of concern owned or operated by the MS4 operator that are not covered under a separate VPDES industrial stormwater permit and identify all municipal facilities that may be a significant source of the identified pollutant. For the purposes of this assessment, a significant source of pollutant(s) from a facility of concern means a discharge where the expected pollutant loading is greater than the average pollutant loading for the land use identified in the TMDL. (For example, a significant source of pollutant from a facility of concern for a bacterial TMDL would be expected to be greater at a dog park than at other recreational facilities where dogs are prohibited);
- 5) Develop and implemented a method to assess TMDL Action Plans for their effectiveness in reducing the pollutants identified in the WLAs. The evaluation shall use any newly available information, representative and adequate water quality monitoring results, or modeling tools to estimate pollutant reductions for the pollutant(s) of concern from implementation of the MS4 Program Plan. Monitoring may include BMP, outfall, or in-stream monitoring, as appropriate, to estimate pollutant reductions. The permittee may conduct monitoring, utilize existing data, establish partnerships, or collaborate with other MS4 permittees or other third parties, as appropriate. This evaluation shall include assessment of the facilities identified in Part I.D.2.b.4). The methodology used for assessment shall be described in the TMDL Action Plan.

- c) This permit shall be modified or alternatively revoked and reissued if any approved wasteload allocation procedure, pursuant to Section 303(d) of the Clean Water Act, imposes wasteload allocations, limits or conditions on the treatment works that are not consistent with the permit requirements
- 3. Analytical methods for any monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the Environmental Protection Agency (EPA). Where an approved 40 CFR Part 136 method does not exist, the permittee shall use a method consistent with the TMDL.
- 4. The permittee is encouraged to participate as a stakeholder in the development of any TMDL implementation plans applicable to their discharge. The permittee may incorporate applicable best management practices identified in the TMDL implementation plan in the MS4 Program Plan or may choose to implement BMPs of equivalent design and efficiency provided that the rationale for any substituted BMP consistent with the assumptions and requirements of the TMDL WLA.

# 5. Annual Reporting Requirements

- a) The permittee shall report on the implementation of the TMDL Action Plans and associated evaluation including the results of any monitoring conducted as part of the evaluation.
- 6. The permittee shall identify the best management practices and other steps that will be implemented during the next permit term as part of the permittee's reapplication for coverage as required under Section II.M. The permittee shall also evaluate and modify the estimated end date for achieving the applicable wasteload based on information acquired during the permit cycle.

## E. Annual Reporting

The permittee shall submit the annual report to the Department of Conservation and Recreation, no later than October 1<sup>st</sup> of each year. The report shall cover the previous fiscal year from July 1<sup>st</sup> to June 30<sup>th</sup> and include the following separate sections:

#### Background Information

- a) The permittee and permit number of the program submitting the annual report;
- Any modifications to the MS4 Program Plan as a result of the annual report;
- c) The reporting dates for which the annual report is being submitted; and,
- d) Certification as per Part II.K.
- 2. A summary of the implementation of each of the components established under Part I.B. and an evaluation of the effectiveness of each component. The permittee should attempt to limit any component's narrative summary to no longer than two-pages plus any necessary tables and figures.
- 3. A summary report of the monitoring programs listed under Part I.C.
- 4. A summary of the implementation of each component listed under Part I.D.

5. The Specific Reporting Requirements identified in this permit.

#### F. DEFINITIONS

Definitions contained in the Virginia Stormwater Management Act, Part I (4VAC50-60-10) and Federal NPDES rules, 40 CFR Part 122, apply where a definition is not specified below. Unless otherwise specified in this permit, additional definitions or words or phrases used in this permit are as follows:

- "Best management practice" or "BMP" means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.
- 2. "Board" means the Virginia Soil and Water Conservation Board
- 3. "Date brought on line" means the date when the permittee determines that a new stormwater management facility is properly functioning to meet its designed pollutant load reduction.
- 4. "DCR" or "Department" means the Department of Conservation and Recreation.
- 5. "DEQ" means the Department of Environmental Quality
- 6. "High priority municipal facility" means any facility owned and operated by the permittee or regulated under this permit that performs fleet maintenance; recycling activities, outdoor equipment and machinery storage; or the unloading, loading or storage of erodible, floatable or soluble materials or chemicals without protection from exposure to precipitation.
- 7. "Industrial land use" means land utilized in connection with manufacturing, processing, or raw materials storage at facilities identified under 40 CFR Part 122.26(b)(14).
- 8. "Maintenance" means maintenance on the MS4 and associated structural stormwater controls including, but not limited to, activities such as inspections of basins and ponds; repair and replacement of failed controls, mowing grass filter strips; regular removal of litter and debris from dry ponds, forebays and water quality inlets; periodic stabilization and revegetation of eroded areas; periodic removal and replacement of filter media from infiltration trenches and filtration ponds; periodic removal of trash and sediment; deep tilling of infiltration basins to maintain capacity; vacuuming or jet hosing of porous pavement or concrete grid pavements; and, removal of litter and debris from wet weather conveyances.
- 9. "Permittee" means Arlington County.
- 10. "Physically interconnected" means that one MS4 is connected to a second MS4 in such a manner that it allows for direct discharges to the second system.
- 11. "Retrofit" means the modification of existing stormwater management facilities, as defined herein, including flood control structures, through construction and/or enhancement in order to address water quality improvements. Retrofit also means the installation or implementation of source reductions to provide water quality improvements on previously developed land where no stormwater source reductions previously existed.

# PART II - CONDITIONS APPLICABLE TO ALL VSMP PERMITS

#### A. MONITORING

- 1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
- 3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

## B. RECORDS

- 1. Monitoring records/reports shall include:
  - a) The date, exact place, and time of sampling or measurements;
  - b) The individual(s) who performed the sampling or measurements;
  - The date(s) and time(s) analyses were performed;
  - d) The individual(s) who performed the analyses;
  - e) The analytical techniques or methods used; and
  - f) The results of such analyses.
- 2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation; copies of all reports required by this permit; and records of all data used to complete the registration statement for this permit, for a period of at least 3 years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the Board.

## C. REPORTING MONITORING RESULTS

- 1. The permittee shall submit the results of the monitoring required by this permit with the annual report unless another reporting schedule is specified elsewhere in this permit.
- 2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR); on forms provided, approved or specified by the Department; or in any format provided that the date, location, parameter, method, and result of the monitoring activity are included.
- 3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the Department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

#### D. DUTY TO PROVIDE INFORMATION

The permittee shall furnish to the Department, within a reasonable time, any information that the Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The Board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from its discharge on the quality of surface waters, or such other information as may be necessary to accomplish the purposes of the Clean Water Act and Virginia Stormwater Management Act. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

## E. COMPLIANCE SCHEDULE REPORTS

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

## F. UNAUTHORIZED STORMWATER DISCHARGES

Pursuant to § 10.1-603.2:2 (A) of the Code of Virginia, except in compliance with a permit issued by the board, it shall be unlawful to cause a stormwater discharge from a MS4.

# **G. REPORTS OF UNAUTHORIZED DISCHARGES**

Any operator of a regulated MS4 who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (2002), 40 CFR Part 117 (2002) or 40 CFR Part 302 (2002) that occurs during a 24-hour period into or upon surface waters; or who discharges or causes or allows a discharge that may reasonably be expected to enter surface waters, shall notify the Department of Environmental Quality of the discharge immediately upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department of Environmental Quality and the Department of Conservation and Recreation, within five days of discovery of the discharge. The written report shall contain:

- 1. A description of the nature and location of the discharge;
- 2. The cause of the discharge;
- 3. The date on which the discharge occurred;
- 4. The length of time that the discharge continued;
- 5. The volume of the discharge;
- 6. If the discharge is continuing, how long it is expected to continue;
- 7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the Department of Environmental Quality and the Department of Conservation and Recreation under the immediate reporting requirements of other regulations are exempted from this requirement.

## H. REPORTS OF UNUSUAL OR EXTRAORDINARY DISCHARGES

If any unusual or extraordinary discharge including a "bypass" or "upset", as defined herein, should occur from a facility and the discharge enters or could be expected to enter surface waters, the permittee shall promptly notify, in no case later than within 24 hours, the Department of Environmental Quality and the Department of Conservation and Recreation by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the Department of Environmental Quality and the Department of Conservation and Recreation within five days of discovery of the discharge in accordance with Part II.I.2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

- 1. Unusual spillage of materials resulting directly or indirectly from processing operations;
- 2. Breakdown of processing or accessory equipment;
- 3. Failure or taking out of service some or all of the facilities; and
- 4. Flooding or other acts of nature.

#### I. REPORTS OF NONCOMPLIANCE

The permittee shall report any noncompliance, which may adversely affect surface waters or may endanger public health.

- An oral report shall be provided within 24 hours to the Department of Environmental Quality and the Department of Conservation and Recreation from the time the permittee becomes aware of the circumstances. The following shall be included as information, which shall be reported within 24 hours under this paragraph:
  - a) Any unanticipated bypass; and
  - b) Any upset which causes a discharge to surface waters.
- 2. A written report shall be submitted within five days and shall contain:
  - a) A description of the noncompliance and its cause;
  - b) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
  - c) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The Board or its designee may waive the written report on a case-by-case basis for reports of noncompliance under Part II.I if the oral report has been received within 24 hours and no adverse

impact on surface waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Parts II.I.1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II.I.2.

NOTE: The immediate (within 24 hours) reports required in Parts II G, H and I may be made to the Department of Environmental Quality's Regional Office Pollution Response Program as found at <a href="http://deq.virginia.gov/Programs/PollutionResponsePreparedness.aspx">http://deq.virginia.gov/Programs/PollutionResponsePreparedness.aspx</a>. Reports may be made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24 hour telephone service at 1-800-468-8892.

4. Whenever the permittee becomes aware of a failure to submit any relevant facts, or submitted incorrect information in any report to the Department of Environmental Quality or Department of Conservation and Recreation, it shall promptly submit such facts or correct information.

#### J. NOTICE OF PLANNED CHANGES

- 1. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
  - a) The permittee plans an alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
    - 1) After promulgation of standards of performance under §306 of the Clean Water Act that are applicable to such source; or
    - 2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal.
  - b) The permittee plans alteration or addition that would significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this permit; or
- 2. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity, which may result in noncompliance with permit requirements.

#### K. SIGNATORY REQUIREMENTS

- 1. Registration Statement. All registration statements shall be signed as follows:
  - a) For a corporation: by a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term compliance with environmental laws and regulations; the manager can ensure that the necessary systems are

established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

- b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
- c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a public agency includes:
  - 1) The chief executive officer of the agency, or
  - 2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
- 2. Reports, etc. All reports required by permits, and other information requested by the Board shall be signed by a person described in Part II.K.1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
  - a) The authorization is made in writing by a person described in Part II.K.1;
  - b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the operator. (A duly authorized representative may thus be either a named individual or any individual occupying a named position that); and
  - c) The written authorization is submitted to the Department.
- 3. Changes to authorization. If an authorization under Part II.K.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II.K.2 shall be submitted to the Department prior to or together with any reports, or information to be signed by an authorized representative.
- 4. Certification. Any person signing a document under Parts II.K.1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### L. DUTY TO COMPLY

The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Virginia Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the Virginia Stormwater Management Act but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under §307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

#### M. DUTY TO REAPPLY

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a completed EPA Form 1, an updated MS4 Program Plan including benchmarks and milestones for the next permit cycle and the second phase of the Chesapeake Bay TMDL action plan, at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Board. The Board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

#### N. EFFECT OF A PERMIT

This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

#### O. STATE LAW

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by §510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part II.U), and "upset" (Part II.V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

#### P. OIL AND HAZARDOUS SUBSTANCE LIABILITY

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law or §311 of the Clean Water Act.

#### Q. PROPER OPERATION AND MAINTENANCE

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances), which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

#### R. DISPOSAL OF SOLIDS OR SLUDGES

Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering surface waters.

#### S. DUTY TO MITIGATE

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

#### T. NEED TO HALT OR REDUCE ACTIVITY NOT A DEFENSE

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

## U. BYPASS

1. "Bypass," as defined in 4VAC50-60-10, means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts II.U.2 and U.3.

#### 2. Notice

- a) Anticipated Bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.
- b) Unanticipated Bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II.I.

#### 3. Prohibition of bypass.

- a) Bypass is prohibited, and the Board or its designee may take enforcement action against a permittee for bypass, unless:
  - Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and
  - 3) The permittee submitted notices as required under Part II.U.2.
- b) The Board or its designee may approve an anticipated bypass, after considering its adverse effects, if the Board or its designee determines that it will meet the three conditions listed above in Part II.U.3 a.

#### V. UPSET

- An upset, as defined in 4VAC50-60-10, constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.
- 2. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- 3. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

An upset occurred and that the permittee can identify the cause(s) of the upset;

- a) The permitted facility was at the time being properly operated;
- b) The permittee submitted notice of the upset as required in Part II.I; and
- c) The permittee complied with any remedial measures required under Part II.S.
- 4. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

#### W. INSPECTION AND ENTRY

The permittee shall allow the Department as the Board's designee, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

- 1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- 3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- 4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the Virginia Stormwater Management Act, any substances or parameters at any location.

For purposes of this subsection, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

#### X. PERMIT ACTIONS

Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

#### Y. TRANSFER OF PERMITS

- Permits are not transferable to any person except after notice to the Department. Except as
  provided in Part II.Y.2, a permit may be transferred by the permittee to a new owner or operator only
  if the permit has been modified or revoked and reissued, or a minor modification made, to identify
  the new permittee and incorporate such other requirements as may be necessary under the Virginia
  Stormwater Management Act and the Clean Water Act.
- 2. As an alternative to transfers under Part II.Y.1., this permit may be automatically transferred to a new permittee if:
  - The current permittee notifies the Department at least two days in advance of the proposed transfer of the title to the facility or property;
  - The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
  - c) The Board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II.Y.2.b.

#### Z. SEVERABILITY

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

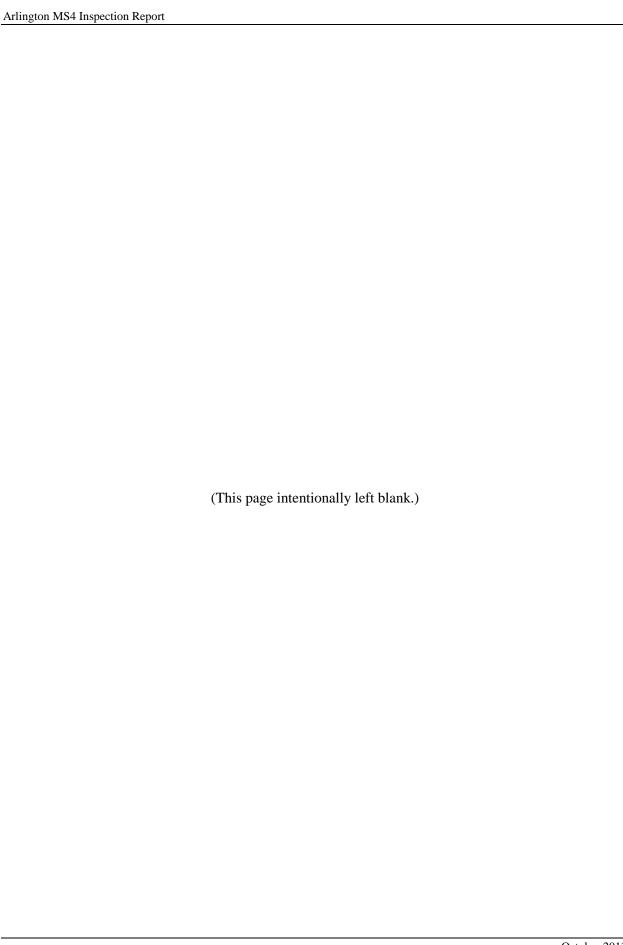
TMDL Project	TMDL Pollutant(s)	Final Report	EPA Approval Date	SWCB Approval Date	Wasteload Allocation	Consolidated Wasteload
		TMDL Report: Bacteria TMDLs for the Hunting Creek, Cameron Run and I	lolmes Run W	atersheds		· .
Hunting Creek	E. Coli	http://www.deq.virginia.gov/tmdl/apptmdls/potrvr/huntingec.pdf	11/10/2010	8/4/2011	3.68E11 cfu/yr	Yes
		TMDL Report: Bacteria TMDL for the Tidal Four Mile Run V	/atershed			
Tidal Four Mile Run	E. Coli	http://www.deq.virginia.gov/tmdl/apptmdls/potrvr/tidalfourmile.pdf	6/14/2010	9/30/2010	2.23E13 cfu/yr	Yes
		TMDL Report: Fecal Coliform TMDL (Total Maximum Daily Load) Developmen	t for Four Mile	Run, Virginia		
Four Mile Run	Fecal Coliform	http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/potrvr/fourmlrn1.pdf	5/31/2002	6/17/2004	2.04E13 cfu/yr	Yes
		TMDL Report: Chesapeake Bay Total Maximum Daily Load for Nitrogen, P	hosphorus and	d Sediment		
	Nitrogen			-	69,035.49 lbs/yr	*
POTTF_DC	Phosphorus	http://www.epa.gov/reg3wapd/tmdl/ChesapeakeBay/tmdlexec.html	12/29/2010		7,050.92 lbs/yr	*
	Sediment				2,801,683.02 lbs/yr	*
POTTF_VA	Nitrogen		12/29/2010	-	56,247.82 lbs/yr	*
	Phosphorus	http://www.epa.gov/reg3wapd/tmdi/ChesapeakeBay/tmdlexec.html			9,110.41 lbs/yr	*
	Sediment				2,427,655.13 lbs/yr	*
TMDL Report:	Potomac River	Total Maximum Daily Loads of Polychlorinated Biphenyls (PCBs) for Tidal Portions Maryland, and Virginia	of the Potoma	c and Anacost	a Rivers in the District	of Columbia,
Potomac River	РСВ	http://www.epa.gov/waters/tmdldocs/TidalPotomac_PCB_TMDL_10-31-07.pdf	10/31/2007	4/11/2008	See TMDL Report	Yes

<sup>\*</sup> The Chesapeake Bay TMDL established wasteload allocations specific to VA0088579 but based the wasteload allocations on all MS4s located in the jurisdiction. As such, the TMDL essentially consolidated the wasteloads of all regulated MS4 stormwater in the jurisdiction but allocated the entire wasteload to the Arlington County MS4.

# ARLINGTON COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PROGRAM INSPECTION REPORT

# October 2013

U.S. Environmental Protection Agency, Region III
Water Protection Division
Office of NPDES Enforcement (3WP42)
1650 Arch Street
Philadelphia, PA 19103



#### **EXECUTIVE SUMMARY**

From May 9 through 10, 2013, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), Virginia Department of Environmental Quality (DEQ), Arlington County Department of Environmental Services (DES), and EPA's contractor, Eastern Research Group, Inc. (ERG), inspected the municipal separate storm sewer system (MS4) program of Arlington County, Virginia (the County or Arlington).

The purpose of this inspection was to obtain information that will assist EPA in assessing the County's compliance with the requirements of its Virginia Pollution Discharge Elimination System Permit Number VA0088579, as well as the implementation status of its current MS4 Program.

Based on the information obtained and reviewed, EPA's compliance inspection team made several observations concerning the County's MS4 program related to the specific permit requirements evaluated. Table 1 below summarizes the permit requirements and the observations made by the inspection team.

Table 1. Summary of Permit Requirements and Inspection Observations

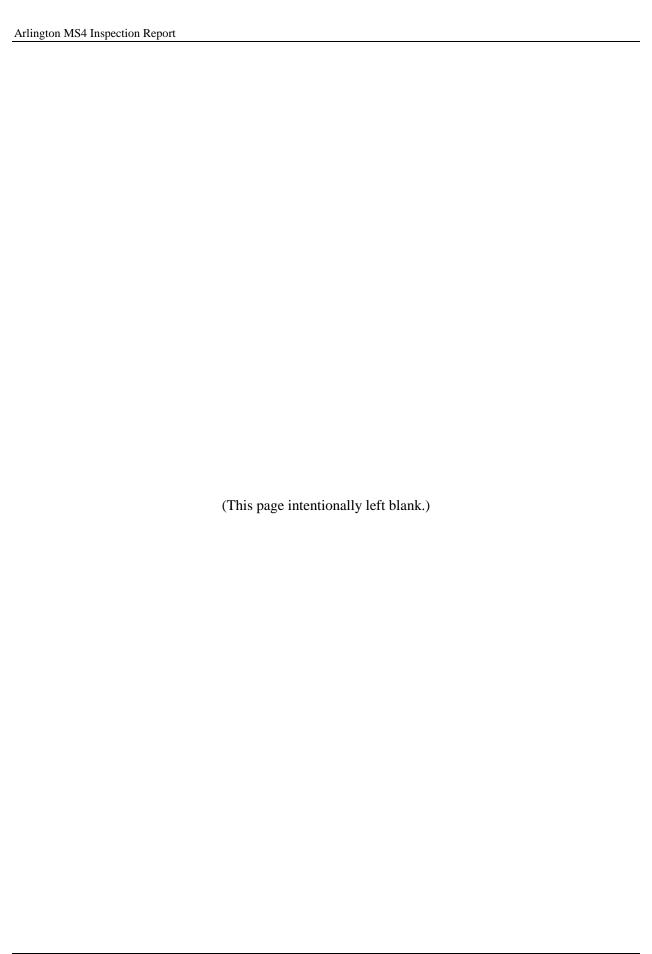
Observations					
Part I.B.1.a. Structural and Source Controls	Observation 1:	Arlington County does not appear to have set forth inspection and maintenance schedules for both municipal-owned and private stormwater management facilities in their Stormwater Management Plan.			
	Observation 2:	At the time of the inspection, Arlington County did not have maintenance agreements in place for all privately maintained stormwater detention and/or water quality BMP facilities.			
	Observation 3:	Arlington County was not able to confirm that all of their municipal owned facilities located on Department of Parks and Recreation (DPR) property have been inspected.			
Part I.B.1 i. Construction Site Runoff	Observation 4:	Arlington County does not appear to be implementing its Erosion and Sediment Control Ordinance or enforcing control measure requirements at construction sites.			
	Observation 5:	At the time of the inspection, erosion and sediment (E&S) controls were not implemented according to E&S plans approved under their Erosion and Sediment Control Ordinance.			
	Observation 6:	Arlington County does not appear to be notifying all construction site owners that they must apply for a Storm Water Construction General Permit with the Department of Environmental Quality.			
	Observation 7:	At the time of the inspection, Arlington County had not obtained coverage under Virginia's <i>General Permit for Discharges of Stormwater from Construction Activities</i> (VAR10) for 10 county-owned active construction sites.			

**Table 1. Summary of Permit Requirements and Inspection Observations** 

Observations					
	Observation 8:	At the time of the inspection, Arlington Public Schools had not obtained coverage under VAR10 for the Wakefield High School project.			
Part I.B.1.m.2. Wet Weather Screening Program	Observation 9:	It appears that Arlington County has not been performing wet weather screening since their first permit term to investigate and address areas suspected of contributing pollutants to the MS4.			
	Observation 10:	Arlington County appears to have prioritized source control screening and de-prioritized outfall screening.			

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#### INTRODUCTION

From May 9 and 10, 2013, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), Virginia Department of Environmental Quality (DEQ), Arlington County Department of Environmental Services (DES), and EPA's contractor, Eastern Research Group, Inc. (ERG), inspected the municipal separate storm sewer system (MS4) program of Arlington County. Discharges from the County's MS4 are regulated by Virginia Pollution Discharge Elimination System Permit Number VA0088579 (the Permit), which is included in Appendix 1.

The purpose of this inspection was to obtain information that will assist EPA in assessing the county's compliance with the requirements of the Permit, as well as the implementation status of its current MS4 Program. The inspection schedule is presented in Appendix 2.

The EPA Inspection Team obtained its information through a series of interviews with representatives from Arlington County, along with a series of site visits, record reviews, and field verification activities. The primary representatives involved in the inspection were the following:

Arlington County Representatives:

# **Department of Environmental Services (DES)**

Mr. Tunji Akiwowo, Acting Development Team Leader

Mr. Tom Artley, Construction Inspections Supervisor

Mr. Mike Collins, Engineering Bureau Chief

Mr. Greg Emanuel, DES Director

Ms. Gayle England, Stormwater Specialist

Ms. Diana Handy, Stormwater Specialist

Mr. Jeff Harn, Office of Sustainability and Environmental Management Chief

Mr. George Hardy, Construction Manager

Ms. Bernadette Grullon, Landscape Architecture Supervisor

Mr. Dennis Leach, Director of Transportation

Ms. Qianqian Li, Plan Reviewer

Ms. Lisa Maher, Development Plan Review Supervisor

Mr. George May, Chief Facilities Design and Construction

Ms. Jen McDonnell, Outreach Specialist

Mr. John Mir, Project Manager

Mr. Joe Nichols, Erosion and Sediment Control Inspector

Mr. Jason Papacosma, Watershed Programs Manager

Mr. Allan Rowley, Planner Stormwater Infrastructure

Mr. Rod Stanley, Erosion and Sediment Control Inspector

Mr. Nick Taktak, Construction Management

Mr. Ray Wiley, Construction Manager

# Office of the County Attorney

Ms. Julie Massie, Assistant County Attorney

EPA Representatives:

Mr. Andy Dinsmore, Stormwater Team Leader

Ms. Kyle Zieba, Enforcement Officer

VA DCR Mr. Jeff Selengut, MS4 Permit Writer

Representatives: Mr. Troy Smith, Stormwater Compliance Specialist

Ms. Kelly Vanover, Regional Manager Mr. Derick Winn, MS4 Permit Writer

VA DEQ Ms. Jamie Bauer, Environmental Specialist II

Representatives: Mr. Jerome Brooks, Manager of the Office of Water Compliance

Ms. Susan Mackert, VPDES Permit Writer

EPA Contractors: Ms. Kavya Kasturi, ERG

Ms. Lauren Scott, ERG Ms. Daisy Wang, ERG Ms. Kathleen Wu, ERG

For a complete list of all inspection participants, please refer to the sign-in sheets in Appendix 3.

During the inspection, the EPA Inspection Team obtained documentation regarding compliance with the Permit. Pertinent information may have been obtained prior to and/or after meeting with Arlington County staff during the physical inspection, and is presented in this report as observations. The presentation of inspection observations in this report does not constitute a formal compliance determination or notice of violation. All referenced documentation is provided in Appendix 4 and photographs taken during the inspection are provided in Appendix 5. A complete list of documents obtained is provided as a Document Log in Appendix 6. Appendix 7 includes a letter from Arlington County to EPA Region 3 outlining items the County is addressing based on the inspection. Any additional information or documents provided by Arlington County after this report is finalized will be added to EPA's files.

The report identifies Permit requirements with specific sections cited and observations made during the inspection. The format of the report follows the numeric system used in the Permit and is sequential. Sections of the permit are restated with observations about those requirements listed below.

Additionally, Appendix 8 provides compliance assistance and/or suggestions for program improvement.

#### ARLINGTON COUNTY BACKGROUND

Arlington County has been developing and implementing its MS4 Program since 1997. The county's coverage under the current VPDES permit became effective on August 28, 2002 with an expiration date of August 27, 2007. In 2007, Arlington County submitted a reapplication for its MS4 permit. Since VA DEQ has not issued a new permit, by default, the Permit has been administratively continued.

Arlington County encompasses approximately 26.5 square miles of land, and is bordered on the west by Fairfax County and the city of Falls Church, on the north and east by the Potomac River, and on the south by Fairfax County and the city of Alexandria. The total population of Arlington

County is estimated to be 221,045 people in 2012<sup>1</sup>. The population of its Metropolitan Statistical Area (MSA) of Washington-Arlington-Alexandria, DC-VA-MD-WV is estimated to be 5,582,170 in 2010<sup>2</sup>. The MS4 discharges into the following receiving waters: Gulf Branch, Donaldson Run, Potomac River (A and B), Windy Run, Spout Run, Colonial Village/Rocky Run, Four Mile Run, Little Pimmit Run, Pimmit Run, and Roaches Run. The County has 11 major watersheds.

Currently, Arlington County has approximately 35 staff including 9 inspectors to implement the MS4 program. According to the county's 2012 Annual Report, Arlington County charges a sanitary district tax of \$0.013 per \$100 of assessed property value to finance the stormwater program, which provided approximately \$7.5 million in revenue for the Stormwater Fund in fiscal year 2012. The county had a budget of \$1,004,818,119 for the 2012 fiscal year<sup>3</sup>. The county has a budget of \$1,052,109,731 for the 2013 fiscal year<sup>4</sup>.

# INFORMATION OBTAINED RELATIVE TO PERMIT REQUIREMENTS

Sunny conditions were experienced throughout most of the inspection activities, but heavy scattered thunderstorms were experienced in the afternoons on both days. Weather history reports indicated that there was a total of 0.54 inches of rain in Arlington County during the field work component of the inspection activities. In addition, the weather history reports indicated approximately 0.59 inches of precipitation had fallen in the three days prior to the inspection and approximately 0.07 inches had fallen in the three days following the inspection<sup>5</sup>.

# Part B.1: Storm Water Management Program Requirements

#### Part I.B.1.a. Structural and Source Controls

The Municipal Separate Storm Sewer System and any storm water structural controls shall be operated in a manner that reduces the discharge of pollutants to the maximum extent practicable.

- 1. Municipal Owned Facilities: The permittee shall inspect and maintain municipally owned stormwater detention and water quality Best Management Practices (BMP) facilities. The inspection and maintenance schedule shall be set forth in the Storm Water Management Plan for Arlington County. At a minimum, these facilities will be inspected and receive maintenance once during this permit cycle. This shall include in the following:
  - a) On-site Facilities
  - b) Regional Facilities
  - c) PL-566 Facilities
  - d) State Regulated Facilities
  - e) Wetland/Forebay Facilities

<sup>&</sup>lt;sup>1</sup> http://quickfacts.census.gov/qfd/states/51/51013.html.

<sup>&</sup>lt;sup>2</sup> http://diversitydata.sph harvard.edu/Data/Profiles/Show.aspx?loc=1428.

<sup>&</sup>lt;sup>3</sup> http://www.arlingtonva.us/departments/ManagementAndFinance/budget/page78609.aspx.

<sup>&</sup>lt;sup>4</sup> http://www.arlingtonva.us/departments/ManagementAndFinance/budget/page83934.aspx.

<sup>&</sup>lt;sup>5</sup> The precipitation data for Arlington County was downloaded from the National Oceanic and Atmospheric Administration's (NOAA) National Climatic Data Center (NCDC) Climate Data Online (CDO) System on July 24, 2013, Available online: http://www.ncdc noaa.gov/cdo-web/#t=secondTabLink.

For municipal owned facilities, the permittee is responsible for obtaining any required State and/or Federal permit necessary to complete maintenance activities.

2. Privately Owned Facilities: The permittee shall also ensure proper function and maintenance of private Storm Water Management (SWM) facilities and water quality Best Management Practice (BMP) facilities. The permittee shall require maintenance agreements and/or maintenance certification programs to ensure proper function for all privately maintained storm water detention facilities and/or water quality BMP facilities. The inspection schedule will be determined by the Storm Water Management Plan for Arlington County. The permittee shall perform random inspections to ensure compliance with the above agreements.

#### Observation 1:

As of EPA's inspection, Arlington County had not developed a specific Storm Water Management Plan (SWMP), and Arlington County does not appear to have set forth inspection and maintenance schedules for both municipal-owned and privately owned stormwater management facilities. (see Observation 1 in Appendix 8). The county stated that their Annual Report is effectively their SWMP. The Annual Report states that there is a contract in place for all county owned stormwater facilities to be inspected on an annual basis, but it does not include a schedule for subsequent years. It also says that owners of privately owned stormwater management facilities with maintenance agreements are required to submit annual inspection and maintenance records (see Exhibit 1 in Appendix 4). The EPA inspection team learned during the inspection that the county currently requires owners of private stormwater management facilities, including stormwater detention facilities and stormwater quality BMP facilities, to submit annual certifications confirming that the facility has been inspected and is either functioning properly and does not need maintenance work, or needs maintenance work. According to the Annual Report, in FY 2012, 50% of detention facilities and 68% of SWM facilities submitted inspection and maintenance records.

#### Observation 2:

At the time of the inspection, Arlington County did not have maintenance agreements in place for all privately maintained stormwater detention and/or water quality BMP facilities. In 2008, the county started requiring owners of private stormwater detention and stormwater quality BMP facilities to enter into maintenance agreements with the county. There are 84 stormwater detention facilities and 284 stormwater quality BMP facilities that currently have maintenance agreements. For facilities with maintenance agreements, the county has the authority to conduct inspections and perform maintenance work on facilities that fail to submit annual certifications and are not properly maintained. In these cases, the county can retroactively charge the owner for the maintenance work.

There are approximately 442 stormwater detention and 15 stormwater quality BMP facilities that do not have maintenance agreements. Ms. Gayle England, the county's primary BMP inspector, explained that since

the majority of stormwater detention facilities date back to the 1970s, the facilities do not meet the code requirements for having a maintenance agreement. The county is requesting owners of private facilities to voluntarily adopt maintenance agreements.

For facilities without a maintenance agreement, the county still requires the owner of the facility to submit an annual certification and the county can conduct inspections of the facility and issue violations, but they do not always have the right to access the property and they do not have the authority to conduct maintenance work on the facility.

Of the 442 stormwater detention facilities that do not have maintenance agreements, 170 facilities have a certification date (i.e., "last inspected") of 2011 and earlier and 19 facilities do not have a certification date associated with them. There was no information on the remaining detention facilities.

Of the 15 stormwater quality BMP facilities that do not have maintenance agreements, 12 facilities have a certification date of 2011 and earlier (see Exhibits 2 and 3, respectively, in Appendix 4).

Observation 3:

Arlington County states in their Annual Report that they currently have a contract in place for all municipal owned stormwater facilities to be inspected on an annual basis. However, Arlington County was not able to confirm that all of their municipal owned facilities located on Department of Parks and Recreation (DPR) property have been inspected annually. Ms. England stated that municipal stormwater facilities located on DPR property were inspected and maintained by DPR. Ms. England stated that she did not know if or how DPR kept track of inspection and maintenance documents for the facilities (see Observation 4 in Appendix 8). She stated that prior to the EPA inspection, she realized that she did not know the last inspection date for several DPR stormwater detention facilities. As a result, she asked DPR to conduct inspections and perform any necessary maintenance on those facilities. On May 10, 2013, the EPA inspection team observed on the county's inspection tracking spreadsheet that several DPR stormwater detention facilities had been last inspected and maintained on May 9, 2013, the first day of the EPA inspection (see Exhibit 4 in Appendix 4).

On May 10, 2013, the EPA inspection team shadowed Ms. England's inspection of the Westover Playground Dry Pond, a DPR stormwater detention pond (structure ID 02-862A) located at 1001 North Kennebec Street, which was inspected and maintained the day before by DPR. Ms. England noted on her inspection checklist that there were some bare spots on the ground in the pond and some sediment in the riser structure, (see Photographs 1 and 2 in Appendix 5), but that otherwise the detention pond had no major maintenance issues (see Exhibit 5 in Appendix 4). She then

sent a follow up e-mail to the DPR manager who is in charge of this facility, notifying him of the bare spots (see Exhibit 6 in Appendix 4).

County staff stated that DPR staff has not been trained by DES to inspect the detention facilities (see Observation 2 in Appendix 8). Ms. England stated that she had inspected the detention facilities within the past five years. The EPA inspection team requested that Arlington County replace the May 9, 2013date with the date the facilities were last inspected by Ms. England and resubmit the spreadsheet; however, at the time of this report, the dates were not provided.

## Part I.B.1.i. Construction Site Runoff

A program to reduce the discharge of pollutants from construction sites shall be implemented under this program to address the following:

- 1. The permittee shall implement its Erosion and Sediment Control Ordinance
  a) The permittee shall inspect construction sites and enforce control measure requirements.
- 2. For land disturbing activities equal to or greater than one acre, the permittee shall notify the construction site owner that they must apply for Storm Water Construction General Permit with the Department of Environmental Quality. The permittee shall maintain records of all approved sites. The permittee must submit a monthly summary of these approved plans to the Department of Environmental Quality, Northern Virginia Regional Office, which will include:
  - a) Owners Name:
  - b) Owners Address;
  - c) Site Name; and
  - d) Site Address.

#### Observation 4:

On May 9, 2013, the EPA inspection team shadowed Mr. Joe Nichols, a county erosion and sediment control (E&S) inspector, on his inspection of the Wakefield High School construction site located at 4901 South Chesterfield Road. During the inspection, the EPA inspection team observed a number of stormwater-related issues. Arlington County staff stated they have had difficulty obtaining compliance at school sites, in part because Arlington County Public Schools is a separate political subdivision of the Commonwealth of Virginia and not part of the county government.

Prior to the visit by the EPA inspection team, Mr. Nichols last visited the site on May 6, 2013. Inspection documentation provided for the May 6, 2013, inspection stated that Mr. Nichols asked the contractor to sweep Dinwiddie Street along the curb line and to restore stone at the stabilized construction entrance (see Exhibit 7 in Appendix 4). Mr. Nichols stated that he previously issued two Notices to Comply (NTC) at the site. Inspection documentation shows that the NTCs were issued on January

13, 2012, and February 28, 2013, both due to poor stabilized construction entrances (SCEs) and sediment tracking onto roads. Inspection documentation shows that during follow up inspections conducted within one week of the issuance of the NTCs, all issues were found to be resolved and both NTCs were lifted.

During the visit by the EPA inspection team, the following issues were observed:

- Sediment accumulation outside of SCEs on Dinwiddie Street and South George Mason Drive (see Photographs 3 through 6 in Appendix 5).
- The SCE on Dinwiddie Street filled with sediment and compacted (see Photograph 7 in Appendix 5).
- The presence of an additional entrance on Dinwiddie Street located near the construction trailer (see Photograph 8 in Appendix 5). The entrance was not stabilized and not identified on the plans (see Sheet C11.00 in Exhibit 8 in Appendix 4). Mr. Nichols stated that the entrance was not supposed to be used as a construction entrance.
- Storm sewer structure 5 was broken (see Photograph 9 in Appendix 5).
- The manhole of structure 29 was ajar (see Photograph 10 in Appendix 5). Plywood was located on top of the structure.
- A partially covered stockpile was located against silt fence along the pool access road (see Photograph 11 in Appendix 5). Mr. Nichols stated he had not walked to this area of the site recently. Silt fence did not extend beyond the stockpile. Materials were located on the edge of the stockpile. Water was present next to the stockpile along the safety fence as well as outside of the safety fence on the pool access road (see Photograph 12 in Appendix 5).
- Staining was present on the pool access road outside of the mortar mixing area (see Photographs 13 and 14 in Appendix 5). Mr. Nichols stated that he does not inspect the mortar mixing area.
- Excavation was occurring along the pool access road. The pit was filled with turbid water. Excavated materials were placed on the side of the pit along the safety fence. Water was flowing from the pile of excavated materials outside of the safety fence (see Photographs 15 and 16 in Appendix 5). No silt fence was in place as required by the E&S plans (see Sheet C11.70 in Exhibit 8 in Appendix 4).
- The area along the back of the site near the existing sports track was not stabilized. Rill and gully erosion was present (see Photographs 17 and 18 in Appendix 5). Mr. Nichols stated he had not visited this area of the site recently. Sediment accumulation was present along and outside of the silt fence at the bottom of the unstabilized area (see Photographs 19 and 20 in Appendix 5). An unprotected storm drain inlet was located outside of the silt fence (see Photograph 21 in Appendix 5).
- A utility trench for the installation of a street light conduit had been excavated along South George Mason Drive. The area was

unstabilized and no perimeter controls were present (see Photograph 22 in Appendix 5). The area is marked as part of the site's limit of disturbance on the E&S plans; however, no E&S controls are required (see sheet C11.82 in Exhibit 8 in Appendix 4). Mr. Troy Smith with VA DCR stated E&S controls should be present in this area. Mr. Nichols stated that he did not inspect this area.

A concrete spill was present along South George Mason Drive near the
excavated utility trench (see Photograph 23 in Appendix 5). Concrete
footings for the streetlights had been poured and concrete washwater
was present on the sidewalk. The washwater flowed down along the
sidewalk on South George Mason Drive and into the road (see
Photographs 24 and 25 in Appendix 5). Upon identification by the
EPA Inspection Team, Arlington County personnel initiated an illicit
discharge citation process.

Mr. Nichols' inspection reports prior to the inspection were typically a single row entry on the inspection report summary sheet. Mr. Nichols used a full sheet to identify all the issues observed during the May 9, 2013, inspection. After the inspection, Arlington County provided documentation that an NTC had been issued on May 10, 2013, and was lifted on May 16, 2013, after all issues had been resolved (see Exhibit 9 in Appendix 4). Arlington County also submitted documentation of a stop work order (SWO) issued on June 11, 2013, due to inadequate bank stabilization and disturbance of silt fence along the pool access road so the area could be used as a construction entrance. The SWO was lifted on June 13, 2013, after the issued had been resolved (see Exhibit 10 in Appendix 4).

### Observation 5:

At the time of EPA's inspection, E&S controls were not being implemented according to approved E&S plans. Arlington County's Erosion and Sediment Control Ordinance is contained in Chapter 57 of the Arlington County Code. Section 57-9 states that "the plan approving authority (i) shall periodically inspect the land-disturbing activity and (ii) may require that the permit holder furnish periodic monitoring reports of the land-disturbing activity to ensure compliance with the approved plan and to determine whether the measures required in that plan are effective in controlling erosion and sediment resulting from the land-disturbing activity."

The EPA inspection team shadowed Mr. Rod Stanley, a county erosion and sediment control (E&S) inspector, while he conducted an inspection of the Parkland Gardens construction site located at 2105 North Glebe Road on May 9, 2013. Prior to the inspection conducted with the EPA inspection team, Mr. Stanley had lasted visited the site on May 3, 2013. During the inspection, Mr. Stanley did not consult the plans unless prompted by the EPA inspection team. The EPA inspection team observed a series of eight-inch yard drains, numbered D11, D12, D13, and D14,

located along the section of the building parallel to Glebe Road. Mr. Stanley stated that the plans did not require inlet protection for these drains; however, after review of the plans on site, Ms. Qianqian Li, a county plan reviewer, stated that protection was required per the plans (see Sheet C-15 in Exhibit 11 in Appendix 4). The EPA inspection team observed that the pipe protecting drain D14 was cracked and wet sediment was located on the drain (see Photograph 26 in Appendix 5). The D14 drain grate was wrapped in filter fabric. A hole was present in the filter fabric wrapped around the grate of drain D12 (see Photograph 27 in Appendix 5). Additionally, Mr. Stanley and the construction site personnel could not identify the location of drain D11. Site personnel stated that it may be buried. The EPA inspection team visited the location of D11 as indicated by the plans; however, the drain was not visible and no inlet protection or other identification of the drain's location was present (see Photograph 28 in Appendix 5).

The EPA inspection team also observed storm sewer junction D10 (see Photograph 29 in Appendix 5). Construction site personnel stated that it had been buried and was dug out. While the plans indicated that inlet protection was required at D10, no inlet protection was in place. The EPA inspection team also observed that inlet protection, as required by the plans, was not in place at junctions D7 and D19.

Observation 6:

Arlington County does not appear to be notifying all construction site owners that they must apply for a Storm Water Construction General Permit with the Department of Environmental Quality. Arlington County staff stated that inspectors ask about coverage under Virginia's *General Permit for Discharges of Stormwater from Construction Activities* (VAR10) during the pre-construction meeting and a check is included in the pre-construction meeting checklist; however, none of the items included in the pre-construction checklists provided addressed coverage under VAR10 (see Exhibit 12 in Appendix 4). County staff also stated that inspectors do not check for confirmation of coverage under VAR10 during inspections. The county expects the implementation of the construction general permit program to transition to the county and intends to begin checking for permit coverage and its requirements once the program has transitioned.

Arlington County includes a "VSMP Note" on site plans stating that construction activities disturbing more than 2,500 square feet are required to file a registration statement for coverage under VAR10 (see Sheet C-3 in Exhibit 11 in Appendix 4).

Observation 7:

At the time of the inspection, Arlington County had not obtained coverage under Virginia's *General Permit for Discharges of Stormwater from Construction Activities* (VAR10) for 10 county-owned active construction sites. Mr. Jason Papacosma, the Watershed Programs Manager, stated that

prior to the EPA inspection, the county realized that some of the county construction sites requiring coverage had not applied for coverage under VAR10. As a result, the county applied for coverage for those sites as of May 7, 2013, two days prior to the EPA inspection.

Observation 8:

At the time of the inspection, Arlington Public Schools, a separate political subdivision of the Commonwealth of Virginia, had not obtained coverage under VAR10. The EPA inspection team observed several issues at the site (see Observation 4 above).

#### Part I.B.1.m.2: Wet Weather Screening Program

The permittee shall investigate, and address areas within their jurisdiction that are suspected to be contributing excessive levels of pollutants to the Municipal Separate Storm Sewer System. The Permittee shall specify the sampling and non-sampling techniques to be used for initial screening and follow-up purposes. Sample collection and analysis need not conform to the requirements of 40 CFR Part 136.

Observation 9:

It appears that Arlington County has not been performing wet weather screening since the first five years of the permit term (August 28, 2002 to August 28, 2007) to investigate and address areas suspected of contributing pollutants to the MS4. According to Section 2.M of the 2012 Annual Report (see Exhibit 13 in Appendix 4), wet weather screening occurred during the county's first five years of the permit term at the Trades Center Complex and three outfalls. No other documentation indicates that additional wet weather screening has occurred since that time. When asked about wet weather screening, county staff described activities related to in-stream monitoring. The EPA inspection team requested "wet weather screening and industrial high risk monitoring report" (see Exhibit 14 in Appendix 4). The document provided in response to that request (see Exhibit 15 in Appendix 4) outlines industrial and commercial screening but does not describe wet weather screening.

Observation 10:

Arlington County has prioritized source control screening and has deprioritized outfall screening (due in large part to the prevalence of ground water inflow into their MS4). The EPA inspection team shadowed county MS4 staff in conjunction with Arlington's Health Department as they demonstrated their source control screenings. They also described some of the corrective actions they had required, primarily of restraints and food facilities. They stated that periodic re-inspection, of these and similar facilities, has lead to continual improvements and has greatly reduced the likelihood of illicit discharges.



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

# 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

October 29, 2012

Mr. Robert Bennett, Acting Director Division of Stormwater Management Virginia Department of Conservation and Recreation 900 East Main Street, 8<sup>th</sup> Floor Richmond, Virginia 23219

Re: Arlington County Municipal Separate Storm Sewer System (MS4) Permit (VA0088579)

Dear Mr. Bennett:

In accordance with the Memorandum of Understanding Regarding Permit and Enforcement Programs Between the State Water Control Board and the Regional Administrator, Region III Environmental Protection Agency (EPA or the Agency) (March 31, 1975, as amended) (hereinafter, MOU), and pursuant to 40 CRF §123.44, EPA has reviewed the above referenced National Pollutant Discharge Elimination System (NPDES) draft permit received from your office on July 31, 2012. On August 30, 2012, EPA issued a general objection and time extension request for the full 90-day review period.

On September 21, 2012, EPA sent written comments and a marked-up Municipal Separate Storm Sewer System (MS4) NPDES permit for Arlington County to the Virginia Department of Conservation and Recreation (DCR). In that letter, EPA requested that DCR address those comments and/or make changes as requested by EPA. Since DCR has not provided a revised permit and/or otherwise addressed EPA's comments and as the time extension expires on October 29, 2012, EPA is providing this specific objection to the issuance of the referenced permit pursuant to 40 C.F.R. §§ 123.44(b) and (c) and Section III of the MOA since our time extension expires on October 29, 2012. As further explained herein, EPA believes that several substantive requirements for MS4 permits, as required by the federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. (CWA), and its implementing regulations, have not been incorporated into the draft Arlington County permit.

EPA's objections to the draft permit and identification of revisions needed before EPA can remove the objection, see 40 C.F.R. § 123.44(b)(2)(ii), are described below. All references are to the July 31, 2012 draft NPDES MS4 permit sent to EPA. EPA includes the enclosed

mark-up of that draft permit for your convenience and information, and the proposed changes made in that document are incorporated herein.

# I. Required Changes and basis for objection in accordance with 40 CFR § 123.44(c)

To resolve this portion of EPA's objection, DCR must add language which specifically prohibits discharges from the MS4 that cause or contribute to any violation of water quality standards, such as the language provided above, or other language EPA may find acceptable.

EPA also requests that DCR consider adding other language suggested in the comments and marked permit enclosed with this letter and those comments are incorporated herein.

# 1. Water Quality Standards

The first basis for objecting is that the effluent limits of the draft permit fail to satisfy the requirements of 40 CFR 122.44(d). See 40 C.F.R. § 123.44(c)(8). Federal regulations require that all NPDES permits contain limitations to control discharges which may cause, have the reasonable potential to cause or contribute to an excursion above water quality standards, 40 C.F.R. §122.44(d)(1)(i), and in addition may not provide less stringent requirements than previously issued permits (backsliding). In addition federal requirements that the permit may not contain less stringent requirements than those included in previously issued permits (backsliding). See 33 U.S.C. 402(o); 40 C.F.R. § 122.44(l). Below is a list of sections in the draft permit that are included in this portion of the objection.

**Part I.A.1.a**: Only discharges that comply with this permit may be authorized to discharge under the permit. Therefore the language in 1.a should be modified to read: "This permit authorizes the discharges of stormwater that comply with the requirements of this permit from all existing..."

**Part I.A.1. a.b.3**: There are several types of discharges on this list of non-stormwater discharges that are not authorized by statute or regulation, and which EPA believes may cause water quality impairments and should therefore not be automatically exempt from controls. Therefore please delete the following from this list: 1) water from crawl space pumps; 0) individual residential car washing; r) street wash water; and t) other similar activities. In particular the final item (other similar activities) provides an unacceptable loop-hole.

**Part I.A.2**: Please make the following or similar edit to the language in this section (provided in the enclosure). Some of these requested changes are based on the language of the 2002 permit currently in effect regarding these controls and EPA's determination that the requirements in the proposed permit are less stringent than the current permit regarding the implementation requirements and enforceability of the MS4 Program plan.

"This permit establishes the specific requirements applicable to the permittee for the term of this permit. The permittee is responsible for compliance with this permit. The permittee shall implement and refine the MS4 Program Plan (as set forth in Part I.B) to ensure compliance

with this permit. Discharges may not cause or contribute to an exceedance of a water quality standard. Where wasteloads have been allocated for pollutant(s) of concern in an approved TMDL, the permittee shall implement the special conditions of this permit for attainment of the relevant WLAs. Compliance with the requirements of this permit shall constitute adequate progress for this permit term: to reduce the discharge of pollutants to the maximum extent practicable; consistent with the assumptions and requirements of the applicable TMDL wasteload allocations; and toward achieving applicable ambient water quality standards."

It is especially critical that the permit is clear that compliance with its provisions constitutes adequate progress towards attainment of water quality standards and wasteload allocations for *this permit term only*. Compliance with this permit provides no assurances about long-term objectives. The above edits also reflect consistency with requirements set forth in the 2002 permit, as well as with regulatory language.

Part I.A.6. MS4 Program Plan: It is very important that the Plan not just be maintained, but also implemented and enforced. 40 CFR §§ 122.26; 122.41(a); 122.47; and 123.44(c)(7). Please modify the language as follows (or something similar):

"The permittee shall maintain, implement and enforce an MS4 Program Plan accurately..."

#### Part I.B. Stormwater Management:

The edits outlined for Part I.A.2 should be inserted here as an introduction to the Plan.

"The permittee shall maintain, implement and enforce an MS4 Program Plan to ensure compliance with this permit. Compliance with the requirements of this permit including the MS4 Program Plan shall constitute adequate progress for this permit term to reduce the discharge of pollutants: to the maximum extent practicable; consistent with the assumptions and requirements of the applicable TMDL wasteload allocations; and toward achieving applicable ambient water quality standards. The following subparts describe among other things requirements for the permittee to implement it its MS4 Program during this permit term."

This permit should also define, either here or in the definitions section, what the Stormwater Master Plan actually is, including that it consists of (among other things) any plan, strategy, schedule or analysis completed in fulfillment of the requirements of this permit.

**Part I.B.2.i.** Storm Sewer Infrastructure Management. EPA expects several edits to this section to improve implementation and enforceability, rather than just continued planning. Expected edits should include but not be limited to actual repair and replacement of outfalls scoring either a 4 or 5 on the completed County outfall evaluation.

**Part I.B.2.j.1(d)**. Containment of leaks should be immediate. Clean-up and disposal should be within 24-hours.

Part I.G. Definitions. EPA provides some important clarifications to the following definition:

"'Maximum extent practicable' or 'MEP' means the technology based discharge standard for

municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is a periodic determination made by the permitting authority, in this case, the Department, an iterative standard, which evolves over time as urban runoff management knowledge increases with the ultimate goal of reducing MS4 discharges to attain and maintain applicable water quality standards in the receiving waters. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water quality standards."

# 2. Incorporation of Wasteload Allocations

EPA also objects to the draft permit failing to satisfy the requirements of 40 CFR 122.44(d) because of its failure to incorporate wasteload allocations. See 40 CFR 123.44(c)(8). Specifically, the following objections are based on the requirements that where the State or EPA has established a TMDL for an impaired water that includes WLAs for storm water discharges, permits must contain effluent limits and conditions consistent with the requirements and assumptions of the WLAs in the TMDL. 40 CFR § 122.44(d)(1)(vii)(B).

Part I.D.1. Special Provisions. The elements of this Part of the Permit are critical toward attainment of WLAs and water quality standards. EPA recognizes that DCR is providing a planning period for the County to determine measures and schedules for implementation. Accordingly, it is very important that these elements, when determined, be both: 1) subject to public notice and comment, and 2) subject to DCR review and approval. In its mark-up of the draft document, EPA has provided a number of language suggestions including a permit provision setting forth the terms of the DCR review and decision process, as well as expected edits to make these expectations very clear. In addition, schedules and compliance deadlines are critical. EPA has included edits to ensure that there is no ambiguity regarding schedules. Those comments are incorporated herein.

EPA also believes that more clarity is needed about the objectives and content of the TMDL Implementation Plans, both for the Chesapeake Bay and other applicable TMDLs:

- 1. The plans must include the estimated dates (i.e. the compliance schedule) by which WLA attainment is expected to be achieved, and these should be placed on fairly aggressive schedules. For the MS4 discharges to the Chesapeake Bay, those schedules should be consistent with the assumptions and requirements of the TMDL WLAs and Virginia's Watershed Implementation Plans (WIPs)
- 2. The permit must include milestones with at least two-year frequencies. These milestones must be enforceable. Milestones that are more than five years away may be modified in future permit terms and in updates to the Plan, but during the current permit term must be enforceable permit provisions.
- 3. For the purpose of adaptive management, unenforceable benchmarks with more than twoyear frequencies may be utilized to ensure that adequate planning, funding and administrative activities occur to keep implementation on schedule.

**Part I.D.2.** Chesapeake Bay TMDL Action Plan Implementation. The permit should be very clear that the Plan to be implemented is one approved by DCR, and that implementation is per the permit schedule, *not* a subsequent determination by the permittee of what it considers to be the maximum extent practicable (MEP). The determination of MEP is within the province of the permit-issuing authority and cannot be delegated to permittees. Also, as noted above, compliance with this permit may demonstrate adequate progress towards achieving the necessary WLAs for this permit term only, not long-term. Accordingly, the following edits are critical (provided in the attached red-line strike-out of the permit):

The operator shall implement the TMDL action plan as approved or conditioned by the Department and according to the schedule therein. Compliance with this requirement demonstrates adequate progress for this permit term towards achieving TMDL wasteload allocations consistent with the assumptions and requirements of the TMDL and shall be included in annual reports subsequent to the submission of the Chesapeake Bay Action Plan.

For the purposes of this permit, the implementation of the following represents the minimum requirements of the TMDL action:....

**Part I.D.1.** Other TMDL Action Plans. All applicable TMDLs currently in effect should be identified by name in the permit, including the date of establishment/approval, the pollutants and the applicable WLA (or summary of DCR's determination of what are considered consistent effluent controls and/or BMPs with the respective WLA).

**Part I.D1.a)** As noted with respect to the Chesapeake Bay TMDL plan, *supra*, the permit must be clear that any additional plan(s) are also subject to DCR review and approval.

**Part I.D.1.b)** TMDL Action Plan Elements. The Plan(s) must include estimates of when the relevant WLAs are expected to be achieved, even if they will not occur during the current permit term. The Plan should be a blue-print for attainment. While EPA acknowledges that more detailed short-term planning and adaptive management may take place in subsequent permit terms, final attainment cannot not be open-ended.

Part I.G. Definitions. EPA provides some important clarifications to the following definition:

"'Wasteload allocation' or 'Wasteload' or 'WLA' means the portion of a receiving water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation. This permit requires the use of WLAs as benchmarks for design, evaluation and iterative implementation of the MS4 Program."

Under **no** circumstances should WLAs be characterized as unenforceable objectives.

## II. Recommended Changes

EPA also strongly recommends that DCR address the following comments and edits for inclusion in the County's permit.

**Part I.B.2.c.** Retrofitting on Prior Developed Lands: EPA would like to see the following or similar edits in order to improve clarity, progressive implementation and enforceability (provided in red-line strike-out in our September 21, 2012 letter):

"Within XX months the permittee shall select at least seven (7) retrofit projects from its watershed retrofit plans <u>and ensure</u> for implementation of those projects within the County right-of-way or on specific County properties <u>by no later than 60 months after the Effective</u>

<u>Date of this permit.</u> <u>The permittee shall submit a summary of the projects and the schedule for implementation to the Department.</u> The permittee may substitute alternative retrofit projects if opportunity exists provided that similar screening is applied to the substituted project as that in the watershed retrofit plans.

In addition, the permittee shall plant a net increase of 2,000 trees in the MS4 sewershed by no later than 60 months after the Effective Date of this permit. The annual total tree planting shall be calculated as a net increase, such that annual mortality is also included in the estimate."

**Part I.B.2.d 2**. Roadways: EPA believes these protocols are notable elements of the MS4 Program Plan and should therefore be required to be submitted to DCR.

"Within 36 months of permit issuance, the permitee shall develop, implement <u>and submit to DCR</u> written protocols..."

**Part I.B.2.f.** Illicit Discharges and Improper Disposal. EPA expects several edits to this section to improve implementation and enforceability (see draft document), including providing a more aggressive schedule for limiting inflow and infiltration from sanitary sewers into the MS4.

# Part I.C. Monitoring Requirements.

In general, EPA would like all monitoring reporting to include synthesis and interpretation of data with respect to relevant WLAs and water quality standards. This information is important not just for data collection, but it can also be used to evaluate whether the receiving waters are improving, or continuing to degrade.

**Part I.D.1.a)** TMDL Action Plan Development Schedule. EPA endorses the development of a single consolidated TMDL implementation plan for relevant TMDLs to the extent that planning, public notice, administration and implementation is easier for the permittee, and review and approval is no more complicated for DCR.

**Part I.D.1.b)** Though the permit does outline a methodology for making estimates of the necessary pollutant reductions it is a little less clear on the methodology for estimating the pollutant reductions from management practices chosen to fulfill the reduction. We are aware of

a spreadsheet methodology developed by DCR, but it is not entirely clear in the permit that the permittee must apply that methodology or can use an equivalent one.

**Part I.D.2.1**. EPA believes that implementation of I.B.2.a) is important to achieving relevant WLAs, but that provisions b) and c) of this Part are also critical.

### General Comments:

- 1. Identified in the draft document are several provisions where additional clarity is needed on compliance dates. Please ensure that it is clear when all provisions are expected to be completed, including interim dates that fall within this permit term if longer-term attainment dates may fall outside of this permit term. The Fact Sheet should also address the basis for not requiring completion during this permit term.
- 2. In many instances it is more appropriate to have compliance endpoints be "no later than 60 months" (or 5 years), rather than "this permit cycle" in case this permit is administratively extended.
- 3. Although EPA expects that this permit will be reissued before the expiration date, it is logical to provide for continued implementation in the event of an administrative extension. Both a general provision for continued implementation of the entire program, as well as a requirement to continue implementing the TMDL Implementation Plan(s) per the approved schedules will help to ensure that progress remains steady.

# III. Anticipated Changes

EPA and DCR have previously discussed that the Arlington County permit will serve as a template for the other Phase I MS4 Permits in Virginia remaining to be reissued. Based on EPA's review of the most recent draft permit submitted for Arlington County, we expect additional MS4 permits to reflect these changes. At the same time, we also understand that the current Arlington County stormwater program is more sophisticated than many in the state, and that several 'template' provisions have been omitted from the Arlington permit (e.g., the identification of retrofit opportunities at County facilities and the evaluation of the Erosion and Sediment Control Program). As a result, and because of the progress of Virginia's municipal stormwater program, EPA expects that the additional Phase I MS4 permits in Virginia will include any additional provisions necessary to ensure that the necessary water quality objectives are met within their unique jurisdictions.

EPA would like to thank DCR for working cooperatively to resolve the remaining issues in an expeditious manner. We have every expectation that a few extra days will allow our respective agencies to come to agreement on the provisions outlined herein. Until the issues are resolved, however, DCR may not issue the Arlington County MS4 permit without written authorization from EPA, in accordance with 40 C.F.R. §122.4(c).

If you have any questions, please contact me or David McGuigan, Associate Director, Watershed Protection Division, at (215) 814-2158.

Sincerely,

Jon M. Capacasa, Director Water Protection Division

Enclosure

cc:

Ginny Snead, DCR Doug Fritz, DCR



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III 1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

# <u>CERTIFIED MAIL</u> <u>RETURN RECEIPT REQUESTED</u>

MAR 2 8 2013

Mr. Bob Holton Town of Bridgewater 201 Green Street Bridgewater, VA 22812

Re: Docket No. CWA-03-2013-0077DN

Administrative Order for Compliance and Request for Information

Dear Mr. Holton:

The United States Environmental Protection Agency ("EPA") has reviewed the 2009 and 2010 Annual Reports that the Town of Bridgewater submitted to the Virginia Department of Conservation and Recreation to assess compliance with Virginia's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("General Permit"). Based on the information disclosed in the Annual Reports, EPA has determined that the Town: a) failed to adequately implement the minimum control measures required by the General Permit; and/or b) failed to adequately document compliance in the Annual Reports as required by the terms of the General Permit.

Enclosed with this letter is an Administrative Order and Request for Information ("Order and Request") issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318(a), 1319(a). This Order and Request contains findings that the Town of Bridgewater has violated Section 301 of the Act, 33 U.S.C. § 1311 and requests further information regarding these findings, including any subsequent corrective action or any additional documentation absent from the Annual Reports which demonstrates compliance. You should carefully read the contents of the enclosed Order and Request and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in further enforcement action being taken, including a civil suit for penalties and injunctive relief that may be required to comply with the permit.

If you require any information or assistance regarding this matter, please contact Peter Gold, NPDES Permits and Enforcement Branch, 215-814-5236.

Sincerely,

Jen M. Capacasa, Director

Water Protection Division

U.S. Environmental Protection Agency, Region III

Enclosure

cc:

Ginny Snead, VADCR Jerome Brooks, VA DEQ

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

# 1650 Arch Street

# Philadelphia, Pennsylvania 19103-2029

#### IN THE MATTER OF:

Town of Bridgewater 201 Green Street Bridgewater, VA 22812 Docket No. CWA-03-2013-0077DN

ORDER FOR COMPLIANCE AND INFORMATION REQUEST

Respondent

#### I. STATUTORY AUTHORITY

This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Sections 308(a) and 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1318(a), 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region III, who in turn has delegated them to the Director of the Water Protection Division, EPA Region III.

## II. STATUTORY AND REGULATORY BACKGROUND

- Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into the waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
- 3) Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue a permit for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions prescribed in the NPDES permit.
- 4) In 1975 EPA approved the Commonwealth of Virginia's program for controlling discharges of pollutants to navigable waters pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). In 1991, EPA authorized Virginia to issue General NPDES Permits.
- 5) In March 1975, EPA authorized Virginia's State Water Control Board to implement the NPDES program in the Commonwealth. On April 1, 1993, the State Water Control

Board staff functions were merged by state legislative action into the Virginia Department of Environmental Quality ("DEQ"), which was created on that date. In 2004, the Virginia General Assembly adopted legislation that transferred the Virginia Pollutant Discharge Elimination System ("VPDES") stormwater construction program and the municipal separate storm sewer system ("MS4") permitting and enforcement responsibilities from DEQ to the Virginia Department of Conservation and Recreation ("DCR"). EPA approved DCR's program at the end of December 2004 and the programs were transferred to DCR on January 29, 2005.

- On July 9, 2008, the Virginia Department of Conservation and Recreation ("DCR") issued General Permit No. # VA 04, the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("the Permit"). The Permit is scheduled to expire on July 8, 2013.
- 7) EPA is authorized under Section 308(a) of the Act, 33 U.S.C. § 1318(a), to require the owner or operator of a point source to establish records and make such reports as may be necessary to carry out the objectives of the Act, including but not limited to:
  - a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance;
  - b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; or
  - c) Carrying out Sections 1315, 1321, 1342, 1344 (relating to state permit programs) 1345 and 1364.
- 8) Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any condition or limitation which implements. . . section 1342. . . he shall issue an order requiring such person to comply with such condition or limitation.
- 9) Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
- 10) "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
- "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
- 12) The term "municipal separate storm sewer system" or "MS4" is defined as:
  - a) "A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm

drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act that discharges to waters of the United States;" and

- b) "Designed or used for collecting or conveying storm water..."40 C.F.R. § 122.26(b)(8)(i).
- A "small municipal separate storm sewer system" or "small MS4" is defined as all separate storm sewers that are:
  - a) "Owned or operated by the United States, a State, city, town, borough... or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes..." And
  - b) "Not defined as 'large' or 'medium' municipal separate storm sewer systems. . ." 40 C.F.R. § 122.26(b)(16).
- Operators of small MS4s are required to obtain NPDES permit coverage if the small MS4 is either:
  - a) "[L]ocated in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census." Or
  - b) "[D]esignated by the NPDES permitting authority. . ." 40 C.F.R. § 122.32. See also 4 VAC 50-60-400.
- Section II.A of the Permit requires the operator of a regulated small MS4 to "develop, implement and enforce a MS4 program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the CWA and regulations."
- 16) Section II.A of the Permit states that "[i]mplementation of Best Management Practices ("BMPs") consistent with the provisions of an iterative MS4 Program . . . constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. . "
- 17) Section II.B of the Permit requires the MS4 Program include Minimum Control Measures ("MCMs") which address: 1) public education and outreach; 2) public involvement/participation; 3) illicit discharge detection and elimination; 4) construction site stormwater runoff control; 5) post-construction stormwater management in new development and redevelopment; and 6) pollution prevention/good housekeeping for municipal operations.

- 18) Section II.E.3 of the Permit requires the Permittee to submit annual reports to DCR that report on the "status of compliance with permit conditions, an assessment of the appropriateness of the identified Best Management Practices ("BMPs"), and progress towards achieving the identified measurable goals for each of the MCMs."
- 19) Section III.L of the Permit requires the Operator to comply with all conditions of the Permit.

#### III. EPA FINDINGS AND ALLEGATIONS

- Town of Bridgewater, Virginia ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- 21) At all times relevant to this Complaint, Respondent owned and/or operated a regulated small MS4, located in Rockingham County, Virginia.
- 22) Respondent's small MS4 discharged storm water into the North River (PS25), Dry River (PS20), Cooks Creek (PS23) and associated tributaries, which constitute "waters of the United States" as that term is defined at 40 C.F.R. § 122.2.
- 23) Stormwater discharges from Respondent's MS4 to the North River (PS25), Dry River (PS20), Cooks Creek (PS23) and associated tributaries are permitted only in accordance with the terms and conditions of a NPDES Permit.
- The outfalls from Respondent's small MS4 constitute "point sources" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- 25) Following issuance of the Permit, Respondent submitted a Registration Statement to DCR for coverage under the Permit. DCR subsequently approved Respondent for coverage.
- During April 2011, EPA personnel conducted a review of Respondent's submitted annual reports from 2009 and 2010 located at the DCR Central Office in Richmond, VA (hereafter, "2011 File Review").

#### IV. <u>VIOLATIONS</u>

#### Count 1: MCM 1: Public Education and Outreach

- 27) Section II.B.1 of the Permit requires the Respondent to "implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff."
- 28) Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified

- best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- 29) Respondents MS4 Program Plan requires that: "The Town will complete one outreach effort to citizens regarding local, state, and national agencies available to contact with their storm water quality concerns and questions."
- 30) Based on EPA's 2011 File Review Respondent either:
  - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
  - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

#### Count 2: MCM 3: Illicit Discharge Detection and Elimination

- Section II.B.3.c of the Permit requires the Respondent to "to the extent allowable under state, tribal, or local law or other regulatory mechanism, effectively prohibit, through ordinance, or other regulatory mechanism, nonstormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions."
- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- Respondents MS4 Program Plan requires that: "Currently the Town of Bridgewater has an ordinance that prohibits refuse or other unsightly or dangerous materials in the Town's public property, streets, roads, or alleys. The Police Department regulates this ordinance which should allow the Town to prevent any illegal discharges to the Town's dedicated storm sewer system. Although the Town already has an ordinance that addresses this issue, the Town will adopt another ordinance that will specifically prohibit any illegal discharges into the Town's dedicated storm sewer system."
- 34) Based on EPA's 2011 File Review Respondent either:
  - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
  - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

#### V. <u>CONCLUSIONS</u> OF LAW

Respondent failed to comply with the terms of the Permit as described above and is therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

### VI. COMPLIANCE ORDER & INFORMATION REQUEST

AND NOW, this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_, 2013, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) to do the following:

Within thirty (30) days of the effective date of this Order, Respondent shall come into compliance with all requirements of the Permit.

Respondent is further REQUIRED, pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) to do the following:

- 37) Within thirty (30) days of the effective date of this Order, Respondent shall:
  - a. Provide additional evidence of compliance absent from the Annual Report where inadequate documentation is alleged in this Order; or
  - b. Submit a work plan and a schedule to achieve compliance with all MCMs and/or BMPs which are noncompliant with the terms of the Permit as alleged in this Order. The work plan and compliance schedule shall be submitted to:

Mr. Peter Gold U.S. EPA, Region III (3WP42) 1650 Arch Street Philadelphia, PA 19103-2029

and

Ms. Ginny Snead, PE DCR Division of Stormwater Management Office of Regulatory Programs Manager Virginia Department of Conservation and Recreation 203 Governor Street, Suite 206 Richmond, VA 23219

c. Pursuant to 40 C.F.R. § 122.22 all submissions must be accompanied by the following certification: "I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### VII. GENERAL PROVISIONS

- Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice.
- This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
- Issuance of this Order and Request does not affect EPA's authority to seek additional information under Section 308 of the CWA, 33 U.S.C. § 1318, or otherwise affect EPA's ability to enforce the Permit or enforce or implement the CWA.

#### VIII. JUDICIAL REVIEW

Respondent may seek federal judicial review of the Order for Compliance pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at http://uscode.house.gov/download/pls/05C7.txt, states the scope of such review.

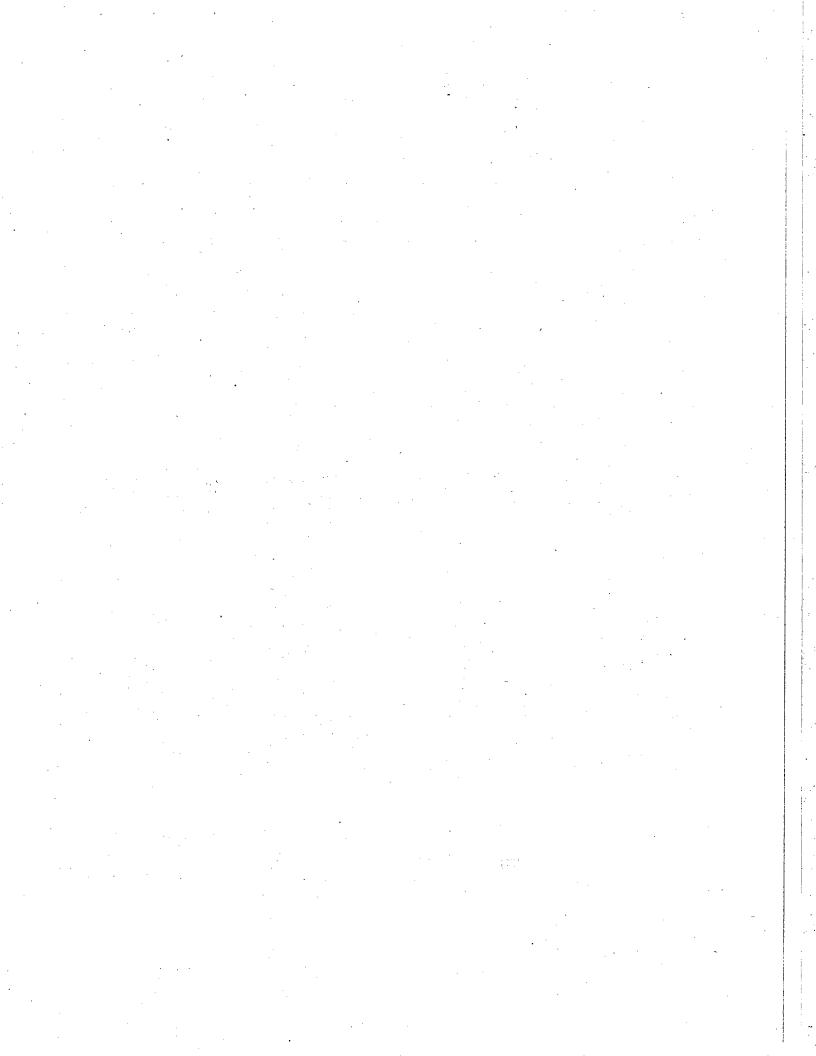
#### IX. OPPORTUNITY TO CONFER

Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Request and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Peter Gold at (215) 814-5236.

#### X. EFFECTIVE DATE

43) This ORDER AND REQUEST will become effective thirty (30) days after receipt unless modified or withdrawn.

Date:	MAR 2 8 2013	( Am M Jagues
		Jon M. Capacasa, Director
		Water Protection Division
		U.S. EPA, Region III





# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

### <u>CERTIFIED MAIL</u> <u>RETURN RECEIPT REQUESTED</u>

MAR 2 8 2013

Mr. John K. Poole Central Virginia Community College 3506 Wards Road Lynchburg, VA 24502

Re: Docket No. CWA-03-2013-0089DN

Administrative Order for Compliance and Request for Information

Dear Mr. Poole:

The United States Environmental Protection Agency ("EPA") has reviewed the 2009 and 2010 Annual Reports that Central Virginia Community College submitted to the Virginia Department of Conservation and Recreation to assess compliance with Virginia's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("General Permit"). Based on the information disclosed in the Annual Reports, EPA has determined that the College: a) failed to adequately implement the minimum control measures required by the General Permit; and/or b) failed to adequately document compliance in the Annual Reports as required by the terms of the General Permit.

Enclosed with this letter is an Administrative Order and Request for Information ("Order and Request") issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318(a), 1319(a). This Order and Request contains findings that the Central Virginia Community College has violated Section 301 of the Act, 33 U.S.C. § 1311 and requests further information regarding these findings, including any subsequent corrective action or any additional documentation absent from the Annual Reports which demonstrates compliance. You should carefully read the contents of the enclosed Order and Request and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in further enforcement action being taken, including a civil suit for penalties and injunctive relief that may be required to comply with the permit.

If you require any information or assistance regarding this matter, please contact Peter Gold, NPDES Permits and Enforcement Branch, 215-814-5236.

Sincerely,

Jon M. Capacasa, Director Water Protection Division

U.S. Environmental Protection Agency, Region III

Enclosure

cc: Ginny Snead, VADCR

Jerome Brooks, VA DEQ

#### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

#### 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

#### IN THE MATTER OF:

Central Virginia Community College 3506 Wards Road Lynchburg, VA 24502 Docket No. CWA-03-2013-0089DN

ORDER FOR COMPLIANCE AND INFORMATION REQUEST

Respondent

#### I. STATUTORY AUTHORITY

This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Sections 308(a) and 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1318(a), 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region III, who in turn has delegated them to the Director of the Water Protection Division, EPA Region III.

#### II. STATUTORY AND REGULATORY BACKGROUND

- Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into the waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
- 3) Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue a permit for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions prescribed in the NPDES permit.
- 4) In 1975 EPA approved the Commonwealth of Virginia's program for controlling discharges of pollutants to navigable waters pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). In 1991, EPA authorized Virginia to issue General NPDES Permits.
- 5) In March 1975, EPA authorized Virginia's State Water Control Board to implement the NPDES program in the Commonwealth. On April 1, 1993, the State Water Control

Board staff functions were merged by state legislative action into the Virginia Department of Environmental Quality ("DEQ"), which was created on that date. In 2004, the Virginia General Assembly adopted legislation that transferred the Virginia Pollutant Discharge Elimination System ("VPDES") stormwater construction program and the municipal separate storm sewer system ("MS4") permitting and enforcement responsibilities from DEQ to the Virginia Department of Conservation and Recreation ("DCR"). EPA approved DCR's program at the end of December 2004 and the programs were transferred to DCR on January 29, 2005.

- On July 9, 2008, the Virginia Department of Conservation and Recreation ("DCR") issued General Permit No. # VA 04, the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("the Permit"). The Permit is scheduled to expire on July 8, 2013.
- 7) EPA is authorized under Section 308(a) of the Act, 33 U.S.C. § 1318(a), to require the owner or operator of a point source to establish records and make such reports as may be necessary to carry out the objectives of the Act, including but not limited to:
  - a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance;
  - b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; or
  - c) Carrying out Sections 1315, 1321, 1342, 1344 (relating to state permit programs) 1345 and 1364.
- 8) Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any condition or limitation which implements... section 1342... he shall issue an order requiring such person to comply with such condition or limitation.
- 9) Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
- 10) "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
- "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
- 12) The term "municipal separate storm sewer system" or "MS4" is defined as:
  - a) "A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm

drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act that discharges to waters of the United States;" and

- b) "Designed or used for collecting or conveying storm water. . "40 C.F.R. § 122.26(b)(8)(i).
- A "small municipal separate storm sewer system" or "small MS4" is defined as all separate storm sewers that are:
  - a) "Owned or operated by the United States, a State, city, town, borough. . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes. . ." And
  - b) "Not defined as 'large' or 'medium' municipal separate storm sewer systems. . ." 40 C.F.R. § 122.26(b)(16).
- Operators of small MS4s are required to obtain NPDES permit coverage if the small MS4 is either:
  - a) "[L]ocated in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census." Or
  - b) "[D]esignated by the NPDES permitting authority. . ." 40 C.F.R. § 122.32. See also 4 VAC 50-60-400.
- Section II.A of the Permit requires the operator of a regulated small MS4 to "develop, implement and enforce a MS4 program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the CWA and regulations."
- Section II.A of the Permit states that "[i]mplementation of Best Management Practices ("BMPs") consistent with the provisions of an iterative MS4 Program . . . constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. .
- 17) Section II.B of the Permit requires the MS4 Program include Minimum Control Measures ("MCMs") which address: 1) public education and outreach; 2) public involvement/participation; 3) illicit discharge detection and elimination; 4) construction site stormwater runoff control; 5) post-construction stormwater management in new development and redevelopment; and 6) pollution prevention/good housekeeping for municipal operations.

- 18) Section II.E.3 of the Permit requires the Permittee to submit annual reports to DCR that report on the "status of compliance with permit conditions, an assessment of the appropriateness of the identified Best Management Practices ("BMPs"), and progress towards achieving the identified measurable goals for each of the MCMs."
- 19) Section III.L of the Permit requires the Operator to comply with all conditions of the Permit.

#### III. EPA FINDINGS AND ALLEGATIONS

- 20) Central Virginia Community College ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- At all times relevant to this Complaint, Respondent owned and/or operated a regulated small MS4, located in Lynchburg, Virginia.
- 22) Respondent's small MS4 discharged storm water into the Burton Creek-Blackwater Creek-James River (JM10) and associated tributaries, which constitute "waters of the United States" as that term is defined at 40 C.F.R. § 122.2.
- 23) Stormwater discharges from Respondent's MS4 to the Burton Creek-Blackwater Creek-James River (JM10) and associated tributaries are permitted only in accordance with the terms and conditions of a NPDES Permit.
- The outfalls from Respondent's small MS4 constitute "point sources" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- Following issuance of the Permit, Respondent submitted a Registration Statement to DCR for coverage under the Permit. DCR subsequently approved Respondent for coverage.
- During April 2011, EPA personnel conducted a review of Respondent's submitted annual reports from 2009 and 2010 located at the DCR Central Office in Richmond, VA (hereafter, "2011 File Review").

#### IV. VIOLATIONS

### Count 1: MCM 2: Public Involvement/Participation

- 27) Section II.B.2.c of the Permit requires the Respondent to "participate, through promotion, sponsorship, or other involvement, in local activities aimed at increasing public participation to reduce stormwater pollutant loads and improve water quality."
- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.

- Respondents MS4 Program Plan requires that: "The college will develop and publish reporting procedures for notifying appropriate college officials of stormwater observations and possible violations. Phone numbers of the campus security and facilities management staff are to be prominently displayed to allow the CVCC to report suspected violations or concerns. Such information will be integrated into the educational material and integrated into the distribution and circulation system identified previously."
- 30) Based on EPA's 2011 File Review Respondent either:
  - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
  - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

#### Count 2: MCM 5: Post-Construction Stormwater Management

- 31) Section II.B.5.b.(6) of the Permit requires the Respondent to "track all known permanent stormwater management facilities that discharge to the regulated small MS4."
- 32) Section II.E.3.k of the Permit requires the Respondent to include "all known permanent stormwater management facility data tracked under Section II.B.5.b.(6) submitted in database format to be prescribed by the department. Upon filing of this list, subsequent reports shall only include those new stormwater management facilities that have been brought online" in each of its annual reports.
- Respondents MS4 Program Plan requires that: "The objective for this BMP is to develop a tracking system for all permanent stormwater management facilities. CVCC, where installed, will track all known permanent stormwater management facilities that discharge to the MS4 including the following information: Type of BMP structural stormwater management facility installed as defined in the Virginia Stormwater Management Handbook; Geographic location (HUC); Where applicable, the impaired surface water into which the stormwater management facility is discharging; and Number of acres treated. CVCC will develop a tracking system by July 9, 2009."
- 34) Based on EPA's 2011 File Review Respondent either:
  - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
  - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

#### V. <u>CONCLUSIONS OF LAW</u>

Respondent failed to comply with the terms of the Permit as described above and is therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

### VI. COMPLIANCE ORDER & INFORMATION REQUEST

AND NOW, this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_, 2013, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) to do the following:

Within thirty (30) days of the effective date of this Order, Respondent shall come into compliance with all requirements of the Permit.

Respondent is further REQUIRED, pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) to do the following:

- 37) Within thirty (30) days of the effective date of this Order, Respondent shall:
  - a. Provide additional evidence of compliance absent from the Annual Report where inadequate documentation is alleged in this Order; or
  - b. Submit a work plan and a schedule to achieve compliance with all MCMs and/or BMPs which are noncompliant with the terms of the Permit as alleged in this Order. The work plan and compliance schedule shall be submitted to:

Mr. Peter Gold U.S. EPA, Region III (3WP42) 1650 Arch Street Philadelphia, PA 19103-2029

and

Ms. Ginny Snead, PE DCR Division of Stormwater Management Office of Regulatory Programs Manager Virginia Department of Conservation and Recreation 203 Governor Street, Suite 206 Richmond, VA 23219 c. Pursuant to 40 C.F.R. § 122.22 all submissions must be accompanied by the following certification: "I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### VII. GENERAL PROVISIONS

- Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice.
- This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
- Issuance of this Order and Request does not affect EPA's authority to seek additional information under Section 308 of the CWA, 33 U.S.C. § 1318, or otherwise affect EPA's ability to enforce the Permit or enforce or implement the CWA.

## VIII. <u>JUDICIAL REVIEW</u>

Respondent may seek federal judicial review of the Order for Compliance pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at http://uscode.house.gov/download/pls/05C7.txt, states the scope of such review.

## IX. <u>OPPORTUNITY TO CONFER</u>

Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Request and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Peter Gold at (215) 814-5236.

## X. <u>EFFECTIVE DATE</u>

43) This ORDER AND REQUEST will become effective thirty (30) days after receipt unless modified or withdrawn.

Date: MAR 2 8 2013

Jon M. Capacasa, Director Water Protection Division U.S. EPA, Region III



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III 1650 Arch Street

## Philadelphia, Pennsylvania 19103-2029

## CERTIFIED MAIL RETURN RECEIPT REQUESTED

MAR 2 8 2013

Mr. Charles Felmlee Central Virginia Training Center 521 Colony Road Madison Heights, VA 24572

Re: Docket No. CWA-03-2013-0090DN

Administrative Order for Compliance and Request for Information

Dear Mr. Felmlee:

The United States Environmental Protection Agency ("EPA") has reviewed the 2009 and 2010 Annual Reports that Central Virginia Training Center submitted to the Virginia Department of Conservation and Recreation to assess compliance with Virginia's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("General Permit"). Based on the information disclosed in the Annual Reports, EPA has determined that the Training Center: a) failed to adequately implement the minimum control measures required by the General Permit; and/or b) failed to adequately document compliance in the Annual Reports as required by the terms of the General Permit.

Enclosed with this letter is an Administrative Order and Request for Information ("Order and Request") issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318(a), 1319(a). This Order and Request contains findings that the Central Virginia Training Center has violated Section 301 of the Act, 33 U.S.C. § 1311 and requests further information regarding these findings, including any subsequent corrective action or any additional documentation absent from the Annual Reports which demonstrates compliance. You should carefully read the contents of the enclosed Order and Request and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in further enforcement action being taken, including a civil suit for penalties and injunctive relief that may be required to comply with the permit.

If you require any information or assistance regarding this matter, please contact Peter Gold, NPDES Permits and Enforcement Branch, 215-814-5236.

Sincerely,

Jon M. Capacasa, Director Water Protection Division

U.S. Environmental Protection Agency, Region III

Enclosure

cc: Ginny Snead, VADCR

Jerome Brooks, VA DEQ

#### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

#### 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

#### IN THE MATTER OF:

Central Virginia Training Center 521 Colony Road Madison Heights, VA 24572 Docket No. CWA-03-2013-0090DN

ORDER FOR COMPLIANCE AND INFORMATION REQUEST

Respondent

#### I. STATUTORY AUTHORITY

This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Sections 308(a) and 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1318(a), 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region III, who in turn has delegated them to the Director of the Water Protection Division, EPA Region III.

#### II. STATUTORY AND REGULATORY BACKGROUND

- Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into the waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
- 3) Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue a permit for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions prescribed in the NPDES permit.
- 4) In 1975 EPA approved the Commonwealth of Virginia's program for controlling discharges of pollutants to navigable waters pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). In 1991, EPA authorized Virginia to issue General NPDES Permits.
- 5) In March 1975, EPA authorized Virginia's State Water Control Board to implement the NPDES program in the Commonwealth. On April 1, 1993, the State Water Control

Board staff functions were merged by state legislative action into the Virginia Department of Environmental Quality ("DEQ"), which was created on that date. In 2004, the Virginia General Assembly adopted legislation that transferred the Virginia Pollutant Discharge Elimination System ("VPDES") stormwater construction program and the municipal separate storm sewer system ("MS4") permitting and enforcement responsibilities from DEQ to the Virginia Department of Conservation and Recreation ("DCR"). EPA approved DCR's program at the end of December 2004 and the programs were transferred to DCR on January 29, 2005.

- On July 9, 2008, the Virginia Department of Conservation and Recreation ("DCR") issued General Permit No. # VA 04, the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("the Permit"). The Permit is scheduled to expire on July 8, 2013.
- 7) EPA is authorized under Section 308(a) of the Act, 33 U.S.C. § 1318(a), to require the owner or operator of a point source to establish records and make such reports as may be necessary to carry out the objectives of the Act, including but not limited to:
  - a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance;
  - b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; or
  - c) Carrying out Sections 1315, 1321, 1342, 1344 (relating to state permit programs) 1345 and 1364.
- 8) Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any condition or limitation which implements. . . section 1342. . . he shall issue an order requiring such person to comply with such condition or limitation.
- 9) Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
- 10) "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
- "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
- 12) The term "municipal separate storm sewer system" or "MS4" is defined as:
  - a) "A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm

drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act that discharges to waters of the United States;" and

- b) "Designed or used for collecting or conveying storm water..."40 C.F.R. § 122.26(b)(8)(i).
- A "small municipal separate storm sewer system" or "small MS4" is defined as all separate storm sewers that are:
  - a) "Owned or operated by the United States, a State, city, town, borough. . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes. . ." And
  - b) "Not defined as 'large' or 'medium' municipal separate storm sewer systems. . ." 40 C.F.R. § 122.26(b)(16).
- Operators of small MS4s are required to obtain NPDES permit coverage if the small MS4 is either:
  - a) "[L]ocated in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census." Or
  - b) "[D]esignated by the NPDES permitting authority. . ." 40 C.F.R. § 122.32. See also 4 VAC 50-60-400.
- 15) Section II.A of the Permit requires the operator of a regulated small MS4 to "develop, implement and enforce a MS4 program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the CWA and regulations."
- 16) Section II.A of the Permit states that "[i]mplementation of Best Management Practices ("BMPs") consistent with the provisions of an iterative MS4 Program . . . constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. . "
- 17) Section II.B of the Permit requires the MS4 Program include Minimum Control Measures ("MCMs") which address: 1) public education and outreach; 2) public involvement/participation; 3) illicit discharge detection and elimination; 4) construction site stormwater runoff control; 5) post-construction stormwater management in new development and redevelopment; and 6) pollution prevention/good housekeeping for municipal operations.

- Section II.E.3 of the Permit requires the Permittee to submit annual reports to DCR that report on the "status of compliance with permit conditions, an assessment of the appropriateness of the identified Best Management Practices ("BMPs"), and progress towards achieving the identified measurable goals for each of the MCMs."
- 19) Section III.L of the Permit requires the Operator to comply with all conditions of the Permit.

#### III. EPA FINDINGS AND ALLEGATIONS

- 20) Central Virginia Training Center ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- At all times relevant to this Complaint, Respondent owned and/or operated a regulated small MS4, located in Amherst County, Virginia.
- 22) Respondent's small MS4 discharged storm water into the Harris Creek-James River (JM11) and associated tributaries, which constitute "waters of the United States" as that term is defined at 40 C.F.R. § 122.2.
- 23) Stormwater discharges from Respondent's MS4 to the Harris Creek-James River (JM11) and associated tributaries are permitted only in accordance with the terms and conditions of a NPDES Permit.
- The outfalls from Respondent's small MS4 constitute "point sources" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- 25) Following issuance of the Permit, Respondent submitted a Registration Statement to DCR for coverage under the Permit. DCR subsequently approved Respondent for coverage.
- During April 2011, EPA personnel conducted a review of Respondent's submitted annual reports from 2009 and 2010 located at the DCR Central Office in Richmond, VA (hereafter, "2011 File Review").

#### IV. VIOLATIONS

#### Count 1: MCM 2: Public Involvement/Participation

- Section II.B.2.c of the Permit requires the Respondent to "participate, through promotion, sponsorship, or other involvement, in local activities aimed at increasing public participation to reduce stormwater pollutant loads and improve water quality."
- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.

- Respondents MS4 Program Plan requires that: "CVTC will develop reporting procedures for notifying appropriate personnel of stormwater observations and possible violations. Procedures will also be developed for receipt and consideration of information submitted by the public for construction related issues. Such information will be integrated into the educational material."
- 30) Based on EPA's 2011 File Review Respondent either:
  - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
  - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

#### Count 2: MCM 2: Public Involvement/Participation

- 31) Section II.B.2.a and II.B.2.b of the Permit requires the Respondent to "promote the availability of the operator's MS4 Program Plan and any modifications for public review and comment. Public notice shall be given by any method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation. Provide access to or copies of the MS4 Program Plan or any modifications upon request of interested parties in compliance with all appropriate freedom of information regulations." and "provide access to or copies of the annual report upon request of interested parties in compliance with all applicable freedom of information regulations."
- 32) Section II.E.3.b. and Section II.E.3.m of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" and provide "copies of any written comments received during a public comment period regarding the MS4 Program Plan or any modifications" in each of its annual reports.
- Respondents MS4 Program Plan requires that: "CVTC will make available both its MS4 Program Plan and its annual reports. These documents will be posted on the CVTC website, which would be available for download. CVTC will develop procedures to record comments that are received from the community."
- 34) Based on EPA's 2011 File Review Respondent either:
  - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
  - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

#### Count 3: MCM 2: Public Involvement/Participation

- 35) Section II.B.2.c of the Permit requires the Respondent to "participate, through promotion, sponsorship, or other involvement, in local activities aimed at increasing public participation to reduce stormwater pollutant loads and improve water quality."
- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- 37) Respondents MS4 Program Plan requires that: "CVTC will continue to promote community involvement by posting dates of activities on its website as well as other forms of communication, if appropriate."
- 38) Based on EPA's 2011 File Review Respondent either:
  - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
  - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

#### V. CONCLUSIONS OF LAW

Respondent failed to comply with the terms of the Permit as described above and is therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

#### VI. COMPLIANCE ORDER & INFORMATION REQUEST

AND NOW, this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 2013, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) to do the following:

Within thirty (30) days of the effective date of this Order, Respondent shall come into compliance with all requirements of the Permit.

Respondent is further REQUESTED, pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) to do the following:

- 41) Within thirty (30) days of the effective date of this Order, Respondent shall:
  - a. Provide additional evidence of compliance absent from the Annual Report where inadequate documentation is alleged in this Order; or
  - b. Submit a work plan and a schedule to achieve compliance with all MCMs and/or BMPs which are noncompliant with the terms of the Permit as alleged in this Order. The work plan and compliance schedule shall be submitted to:

Mr. Peter Gold U.S. EPA, Region III (3WP42) 1650 Arch Street Philadelphia, PA 19103-2029

and

Ms. Ginny Snead, PE
DCR Division of Stormwater Management
Office of Regulatory Programs Manager
Virginia Department of Conservation and Recreation
203 Governor Street, Suite 206
Richmond, VA 23219

c. Pursuant to 40 C.F.R. § 122.22 all submissions must be accompanied by the following certification: "I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### VII. GENERAL PROVISIONS

- Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice.
- This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
- Issuance of this Order and Request does not affect EPA's authority to seek additional information under Section 308 of the CWA, 33 U.S.C. § 1318, or otherwise affect EPA's ability to enforce the Permit or enforce or implement the CWA.

#### VIII. <u>JUDICIAL REVIEW</u>

Respondent may seek federal judicial review of the Order for Compliance pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at http://uscode.house.gov/download/pls/05C7.txt, states the scope of such review.

#### IX. OPPORTUNITY TO CONFER

Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Request and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Peter Gold at (215) 814-5236.

#### X. <u>EFFECTIVE DATE</u>

47) This ORDER AND REQUEST will become effective thirty (30) days after receipt unless modified or withdrawn.

Date: MAR 2 8 2013

John M. Capacasa, Director Water Protection Division U.S. EPA, Region III

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

#### 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

In the Matter of:

: Proceeding to Assess Class II
: Administrative Penalty Under
: Section 309(g) of the Clean Water Act

City of Charlottesville : Docket No. CWA-03-2013-0127

CONSENT AGREEMENT AND FINAL ORDER

Respondent

#### I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

- 1. This Consent Agreement and Final Order (CAFO) is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III (Complainant) and the City of Charlottesville (Charlottesville, City or Respondent) pursuant to Section 309(g) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. The parties agree to the commencement and conclusion of this CAFO as prescribed by the Consolidated Rules pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3), and having consented to the entry of this CAFO, Respondent agrees to comply with the terms of this CAFO.
- 2. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$16,000 per day for each day of violation occurring after January 12, 2009 up to a total penalty amount of \$177,500.

#### II. FINDINGS OF FACT and CONCLUSIONS OF LAW

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.

- 4. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States or may authorize states to issue such permits. The discharges are subject to specific terms and conditions as prescribed in the permit.
- 5. Section 402(p) of the Act, 33 U.S.C. §1342(p) provides that both discharges from a municipal separate storm sewer system (MS4) and discharges associated with industrial activity may be subject to NPDES permitting requirements.
- 6. Pursuant to Section 402(b) of the Act, 33 U.S.C. §1342(b), EPA authorized the Commonwealth of Virginia (Commonwealth or Virginia) NPDES program on March 31, 1975. The Virginia Department of Environmental Quality (VADEQ) was authorized to issue general NPDES permits on April 20, 1991. On December 30, 2004, EPA approved the Commonwealth's request to transfer the issuance of general and individual permits for construction and MS4 storm water discharges from VADEQ to the Virginia Department of Conservation and Recreation (VADCR).
- 7. Pursuant to Section 402(i) of the Act, 33 U.S.C. § 1342(i), EPA retains its authority to take enforcement action in Virginia for NPDES permit violations.
- 8. The term "municipal separate storm sewer system" or "MS4" is defined, in part, as "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8).
- 9. The term "small municipal separate storm sewer system" or "small MS4" means "all separate storm sewers that are: (i) owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water. . . .; [and] (ii) Not defined as "large" or "medium" municipal separate storm sewer systems." 40 C.F.R. § 122.26(b)(16) and (17).
- 10. Pursuant to 40 C.F.R. §122.26(a)(9)(i)(A), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32.
- 11. Pursuant to 40 C.F.R. §122.32(a)(1), the Commonwealth of Virginia has determined that Charlottesville is a small MS4 located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, and accordingly requires an NPDES permit.

- 12. Therefore, Charlottesville is a "small MS4" within the meaning of 40 C.F.R. § 122.26(b)(16).
- 13. The City's MS4 is covered under the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems, General Permit No. VAR04, effective July 9, 2008. Charlottesville's permit registration number is VAR040051 (MS4 Permit).
- 14. On March 7 and 8, 2012 representatives of EPA conducted an inspection of Charlottesville's MS4 program implementation.
- 15. On November 2, 2012, EPA issued the City of Charlottesville, Virginia Municipal Separate Storm Sewer System (MS4) Program Inspection Report (Inspection Report), which included, in addition to general information regarding the City's MS4 program and history, twenty (20) observations regarding the City's MS4 Program related to the requirements of the current MS4 Permit (VAR04, effective July 9, 2008). The Inspection Report included eight (8) attachments (exhibit log, photo log, document log, etc.).
- 16. The City received a copy of the Inspection Report by electronic mail dated February 27, 2013. The City prepared and submitted an initial response to EPA on the observations on March 8, 2013 and further response on March 25, 2013.
- 17. Based upon the March 7 and 8, 2012 inspection, EPA documented 20 observations. EPA has identified two categories which it has concluded were violations of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311. This CAFO directs the City to pay a civil penalty to resolve the violations EPA has identified based upon the Inspection Report.
- 18. Section II.B.4.a of the MS4 Permit states that "the operator shall develop, implement, and enforce procedures to reduce pollutants in any stormwater runoff to the regulated small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act."
- 19. Section II.B.6 of the MS4 Permit requires the City "develop and implement an operation and maintenance program consistent with the MS4 Program Plan that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations...The operator shall identify, implement, evaluate and modify, as necessary, BMPs to meet the following pollution prevention/good housekeeping for municipal operations measurable goals: a. Operation and maintenance programs including activities, schedules, and inspection procedures shall include provisions and controls to reduce pollutant discharges into the regulated small MS4 and receiving surface waters; b. Illicit discharges shall be eliminated from storage yards, fleet or maintenance shops, outdoor storage areas, rest areas, waste transfer stations, and other municipal facilities; c. Waste materials shall be disposed of properly; d. Materials that are soluble or erodible shall be protected from exposure to

precipitation; e. Materials, including but not limited to fertilizers and pesticides, that have the potential to pollute receiving surface waters shall be applied according to manufacturer's recommendations; and f. For state agencies with lands where nutrients are applied, nutrient management plans shall be developed and implemented in accordance with the requirements of §10.1-104.4 of the Code of Virginia."

#### III. EPA FINDINGS OF VIOLATION

- 20. EPA observed several stormwater control deficiencies at the public and private construction sites it visited during the March 7 and 8, 2012 inspection. These identified deficiencies included, among others, inadequate inlet protections, unmaintained silt fences, and sediment tracking observed on the roadway adjacent to an active construction site's entrance.
- 21. At the time of the inspection, EPA observed several stormwater control measure deficiencies at the municipally-owned sites it visited during the March 7 and 8, 2012 inspection. The identified deficiencies included, among others, multiple locations where silt fencing was inadequately installed, including around a stormwater inlet structure.
- 22. Based upon the inspection, EPA has concluded that Respondent's failures to: 1) identify and implement, evaluate and modify as necessary, BMPs to eliminate illicit discharges from storage yards, fleet or maintenance shops, and other outdoor storage areas; and 2) develop, implement, and enforce procedures to reduce pollutants in any stormwater runoff to the regulated small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre, violate the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

#### IV. CONSENT AGREEMENT AND FINAL ORDER

- 23. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.
- 24. For the purpose of this proceeding, Respondent neither admits nor denies the factual allegations and conclusions of law set forth in this CAFO.
- 25. Respondent waives any defenses it might have as to jurisdiction, its right to contest the allegations through hearing or otherwise, and its right to appeal the proposed final order accompanying the consent agreement.
- 26. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
- 27. Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CAFO pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.

- 28. Each party to this action shall bear its own costs and attorney fees.
- 29. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.
- 30. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
- 31. By entering into this CAFO, the City does not admit any liability for the civil claims alleged herein.
- 32. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the Commonwealth of Virginia regarding this action, and will mail a copy of this document to the appropriate Virginia official.
- 33. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS to pay a civil penalty in the amount of twenty-six thousand dollars (\$26,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.
- 34. Respondent shall pay the total administrative civil penalty in the Paragraph 33 within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Payment shall be made by one of the following methods set forth below.

Payment by check to "United States Treasury":

By regular mail:

U.S. EPA Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, MO 63197-9000

Contact Eric Volck (513-487-2105)

By overnight delivery:

U.S. Bank Government Lock Box 979077 US EPA, Fines and Penalties 1005 Convention Plaza Mail Station SL-MO-C2-GL St. Louis, MO 63101

Contact: Eric Volck (513-487-2105)

#### By Wire Transfer:

Federal Reserve Bank of New Lancaster

ABA = 021030004

Account = 68010727

SWIFT Address = FRNYUS33

33 Liberty Street

New Lancaster, NY 10045

(Field Tag 4200 of the wire transfer message should read:

D 68010727 Environmental Protection Agency)

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account Number: 310006
CTX Format
Transaction Code 22 - checking
808 17<sup>th</sup> Street, NW
Washington, D.C. 20074

Contact for ACH: John Schmid (202-874-7026)

#### **On-Line Payments:**

The On-Line Payment Option, available through the Dept. of Treasury, can be accessed from the information below:

WWW.PAY.GOV Enter sfo 1.1 in the search field Open form and complete required fields.

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make a payment.htm

Respondent shall send notice of such payment, including a copy of the check if payment is made by check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00) U.S. EPA Region III 1650 Arch Street Philadelphia, PA 19103-2029

-and-

Robert Smolski, Esquire Mail Code 3RC20 Office of Regional Counsel U.S. EPA Region III 1650 Arch Street Philadelphia, PA 19103-2029

- 35. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any other issue, not included in this CAFO, related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.
- 36. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payments as required herein or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which it is due. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

37. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment

of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

- 38. Issuance of this CAFO resolves only the administrative and civil claims set forth in this CAFO for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
- 39. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO.
- 40. The penalty specified in Paragraph 33, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
- 41. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
- 42. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
- 43. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

#### V. <u>EFFECTIVE DATE</u>

Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective 30 days after it is filed with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5).

## FOR RESPONDENT, CITY OF Charlottesville:

Date:			
By:			
Name:			
Title:			
SO OR	DERED, pursuant to 33	3 U.S.C. 1319(g)	and 40 C.F.R. Part 22,
this	day of	,	2013
	M. Garvin		
_	al Administrator A Region III		
	$\sim$		

## RECEIVED

#### CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO"), resolving I/M/O City of Chesapeake, Docker 19, CAM 203, 2011-0152 and Administrative Order for Compliance on Consent ("AOCC"), I/M/O City of Chesapeake, Docker No. CWA-03-2011-0153DN, have been filed with the EPA Region III Regional Hearing Clerk and that I caused true and correct copies of the CAFO and AOCC to be sent via Certified Mail, Return Receipt Requested and electronic mail to:

> Ms. Kelly J. Lackey, Esq. Assistant City Attorney City of Chesapeake 306 Cedar Road Chesapeake, VA 23322 klackey@cityofchesapeake.net

Douglas Frankenthaler Assistant Regional Counsel U.S. Environmental Protection

Agency, Region III

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III 1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

SUBJECT:

I/M/O City of Chesapeake, Docket No.

Date: March 29, 2012

CWA-03-2011-0152

FROM:

Marcia Mulkey, Regional Counsel
Office of Regional Counsel
Jon Capacasa, Director
Water Protection Division

TO:

Shawn Garvin

Regional Administrator

The attached Consent Agreement and Final Order (CAFO) resolves the Complaint filed against the City of Chesapeake, VA (Respondent) for violations of its MS4 Permit. The Respondent has agreed to pay \$30,000 (\$10,000 cash plus a \$20,000 SEP) to settle the allegations in the Complaint and to enter into an Administrative Order for Compliance on Consent (AOCC) requiring that it take steps to improve its MS4 program. The staff assigned to this matter from the Office of Regional Counsel and the Water Protection Division, have determined that the negotiated settlement is justified under EPA's CWA settlement policy and SEP policy. The CAFO settles violations of Section 301 of the Clean Water Act (CWA), 33 U.S.C. § 1311, and is authorized by Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

The CAFO is being entered into pursuant to 40 C.F.R. § 22.18(b)(2).

We recommend that you sign the attached CAFO. Questions concerning this matter may be directed to Douglas Frankenthaler, Assistant Regional Counsel, at ext. 2472.

Cc: Kelly J. Lackey, Esq. Counsel for Respondent, City of Chesapeake



### CITY OF CHESAPEAKE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) INSPECTION

CHESAPEAKE DEPARTMENT OF PUBLIC WORKS 929 EXECUTIVE BOULEVARD CHESAPEAKE, VA 23328

### FINAL REPORT MARCH 2011

Office of Compliance and Enforcement U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, NW Washington, D.C. 20460

U.S. Environmental Protection Agency, Region III
Water Protection Division
Office of NPDES Enforcement (3WP42)
1650 Arch Street
Philadelphia, PA 19103

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#### **EXECUTIVE SUMMARY**

# Municipal Separate Storm Sewer System (MS4) Inspection Report Chesapeake, Virginia

From June 16 through June 17, 2010, a compliance inspection team comprised of staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), EPA's contractor, Eastern Research Group, Inc. (ERG), and ERG's subcontractor, PG Environmental, LLC, inspected the city of Chesapeake, Virginia municipal separate storm sewer system (MS4) program. Discharges from the city's MS4 are regulated by Virginia Pollution Discharge Elimination System (VPDES) Permit Number VA0088625, effective March 8, 2001. The purpose of this inspection was to obtain information for evaluating the city's compliance with Permit VA0088625 requirements, which are included in Attachment 1. The inspection focused specifically on the following sections of the Permit in relation to the city's MS4 program: (1) Part I.A.1.a - Structural and Source Control Measures; (2) Part I.A.1.b - Unauthorized Discharges and Improper Disposal; (3) Part I.A.1.c - Runoff from Industrial and Commercial Facilities; and (4) Part I.A.1.d - Runoff from Construction Sites.

Based on the information obtained and reviewed, the EPA inspection team made several observations concerning the city of Chesapeake's MS4 program related to the specific permit requirements evaluated. Table 1 summarizes the permit requirements and the observations noted by the inspection team.

Table 1. Observations Identified During the Chesapeake Inspection (6/16/10 – 6/17/10)

Virginia Permit Number VA0088625 Requirement	Observations				
I.A.1.a – Structural and Source Control Measures	Observation 1.	ation 1. The city of Chesapeake is not tracking and inspecting private stormwater management facilities as required by the city's Municipal Separate Storm Sewer System Program Plan (MS4 Program Plan).			
I.A.1.b – Unauthorized Discharges and Improper Disposal	Observation 2.	The city of Chesapeake is not prioritizing industrial and commercial areas for dry weather screening inspections.			
1	Observation 3.	The city of Chesapeake is not taking samples and conducting field tests when standing water was observed in a storm sewer inlet.			
I.A.1.c – Runoff from Industrial and Commercial Facilities	Observation 4.	The city of Chesapeake is not conducting regular industrial inspections at facilities with the potential to contribute substantial pollutant loadings.			
	Observation 5.	The city of Chesapeake is not prohibiting non-stormwater discharges from the MS4 originating from the city municipal yards.			

Table 1. Observations Identified During the Chesapeake Inspection (6/16/10-6/17/10)

Virginia Permit Number VA0088625 Requirement	Observations				
I.A.1.d – Runoff from Construction Sites	Observation 6.	The erosion and sediment control (E&S) inspections conducted by the city of Chesapeake are not addressing non-sediment, construction site pollutant sources.			
	Observation 7.	The city of Chesapeake is not enforcing proper construction erosion and sediment controls at the Culpepper Landing Development Construction Site.			
	Observation 8.	The city of Chesapeake does not have a training program to educate construction site operators.			
	Observation 9.	The city of Chesapeake's Standard Operating Procedure (SOP) "Erosion and Sediment Control Minimum Standards, Inspection and Enforcement" does not reflect current operating procedures.			
	Observation 10.	The inspectors of the city of Chesapeake are not completing the documentation required by SOP "Erosion and Sediment Control Minimum Standards, Inspection and Enforcement".			

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#### I. INTRODUCTION

From June 16 through June 17, 2010, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), EPA's contractor, Eastern Research Group, Inc. (ERG), and ERG's subcontractor, PG Environmental, LLC, (hereafter, collectively, EPA inspection team) inspected the city of Chesapeake, Virginia (hereafter, the city, Chesapeake or the city of Chesapeake) municipal separate storm sewer system (MS4) program. Discharges from the city's MS4 are regulated by Virginia Pollution Discharge Elimination System (VPDES) Permit Number VA0088625, effective March 8, 2001. The purpose of this inspection was to evaluate compliance with the city's Permit VA0088625 requirements, which are included in Attachment 1. The inspection focused specifically on the following sections of the Permit in relation to the city's MS4 program: (1) Part I.A.1.a - Structural and Source Control Measures; (2) Part I.A.1.b - Unauthorized Discharges and Improper Disposal; (3) Part I.A.1.c - Runoff from Industrial and Commercial Facilities; and (4) Part I.A.1.d - Runoff from Construction Sites. The following personnel participated in this inspection:

Chesapeake Department of Mr. Eric Martin, Public Works Director

Public Works<sup>1</sup>: Mr. Richard Broad, Stormwater Administrator

Mr. RC Kemner, Conservator of the Peace

Ms. Casey Magruder, Environmental Engineering Specialist

Mr. Sam Sawan, Senior Stormwater Engineer Mr. Roger Trafry, Construction Inspector, II Mr. Randy Ussery, Engineering Technician

Chesapeake Department of Mr. Thomas D. Crawford, Development Construction Administrator

Development and Permits: Mr. Dave Dombroski, Permit Engineer

Mr. Ron Hepler, Construction Inspector Mr. Hal Shiflet, Construction Inspector

Chesapeake Fire Ms. Barbara Brumbaugh, Environmental Quality Manager

Department: Mr. Don Fowler, Deputy Fire Marshal

EPA Representatives: Mr. Chuck Schadel, EPA Region 3, Enforcement Officer

Ms. Liz Ottinger, EPA Region 3

Virginia DCR Mr. Doug Fritz, MS4 Program Manager

Representative:

EPA Contractors: Mr. Mark Briggs, ERG

Ms. Kavya Kasturi, ERG

Mr. Max Kuker, PG Environmental, LLC

Section II of this report presents background information on Chesapeake's MS4 program. Section III presents information obtained during the inspection related to the specific permit requirements evaluated.

A copy of sign-in sheets containing the names of all city participants in the inspection is included as Attachment 2.

#### II. CHESAPEAKE BACKGROUND

The city of Chesapeake is located in eastern Virginia. It is bordered on the north by the Cities of Norfolk and Portsmouth, on the east by the city of Virginia Beach, on the west by the city of Suffolk, and on the south by the State of North Carolina. According to the U.S. Census Bureau, as of 2010, the city's population was estimated at 222,209 and the city has a total area of approximately 340 square miles.

Chesapeake's MS4 program is administered by the following departments:

- Department of Public Works;
- Department of Development and Permits;
- Fire Department;
- Department of Planning;
- Department of Neighborhood Services;
- Department of Public Utilities;
- Department of Parks and Recreation; and
- Department of General Services.

# III. INFORMATION OBTAINED DURING THE INSPECTION REGARDING PERMIT REQUIREMENTS

The EPA inspection team obtained information to evaluate the city of Chesapeake's compliance with the requirements of the Permit (included in Attachment 1) under which the city's MS4 system is covered. The Permit has an effective date of 8 March 2001 and an expiration date of 10 April 2006. The permit has been administratively extended to the present. The EPA inspection team evaluated four permit components; observations regarding the city's implementation of each permit component are presented in the following four subsections. Attachment 3, the Exhibit Log, contains all referenced exhibits, and Attachment 4, the Photograph Log, contains all referenced photographs (additional photographs are available in the inspection record).

#### III.A. Requirement I.A – Stormwater Management Program

Part I.A of the permit contains requirements for the city to develop, implement and refine a Stormwater Management Program (SWMP) including pollution prevention measures, management or removal techniques, use of legal authority, and other appropriate means to control the quality and quantity of stormwater discharged from the MS4. The staff responsible for the city's SWMP includes representatives from numerous organizational divisions as described in Section II of this report. The city implements its SWMP through its MS4 Program Plan. The EPA inspection team's observations related to this section of the permit are discussed below.

#### III.B. Requirement I.A.1.a – Structural and Source Control Measures

Part I.A.1.a of the permit contains requirements for the city to utilize structural and source control measures to reduce pollutants in stormwater runoff from commercial and residential areas, which the city addresses through a program herein referred to as its Structural and Source Control Measures Program. Within this program area, the inspection was focused on Parts I.A.1.a(1), (2), and (4) of the permit. State laws such as the Virginia Stormwater Management Law (§ 10-603 et seq. of the Virginia Code), the Virginia Stormwater Management Regulations (4VAC3-20 et seq.), and the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq. of the Virginia Code) provide the underlying regulatory framework for the city's Structural and Source Control Measures Program.

The city has promulgated the following ordinances pertaining to development and redevelopment:

- Chapter 19 Business Regulations:
  - Section 600 et seq.: Chesapeake Landscaping Ordinance.
- Chapter 26 Environment (Primary Requirements):
  - Article II: Environmental Improvement Council;
  - Article III: Erosion and Sediment Control;
  - Article VIII: Stormwater Management; and
  - Article X: Chesapeake Bay Preservation Area District.
- Chapter 66 Streets and Sidewalks.
- Chapter 70 Subdivisions.

The city has also developed a *Public Facilities Manual* (PFM). The manual covers topics such as site plan submission, design criteria for stormwater management (SWM) facilities, drainage, and stormwater quantity and quality requirements.

Part I.A.1.a of the Permit addresses requirements for the structural and source controls program. Within this program area, the inspection was focused on site plan review, maintenance inspections, and enforcement. The city's SWMP for structural and source control measures is primarily implemented by the Department of Development and Permits and the Department of Public Works' Stormwater Management Division (Stormwater Management); the inspection team's observations related to this section of the permit are discussed below.

#### III.B.1. Site Plan Review

Part I.A.1.a.(2) of the permit states that the city must "adhere to...all those components of the Comprehensive Plan, the Storm Water Management Master Plan, and all storm water related ordinances pertaining to development and redevelopment in the City of Chesapeake."

The administrative plan process includes the review of land development applications by various city of Chesapeake staff. This review does not require a public hearing. The types of applications that can be approved administratively include the preliminary site plan application, preliminary subdivision plan application, Chesapeake Bay Preservation Area (CBPA) encroachments (other than CBPA exceptions or appeals), Agricultural Divisions, and Resubdivisions.

A preliminary site plan is required for new construction and additions located on land zoned commercial, office and institutional, industrial, and multi-family residential. This review is intended to ensure that the site plan conforms to all city code development ordinances and standards including erosion and sediment (E&S) control and structural control measures. On September 25, 2002, the Planning Commission delegated preliminary site plan review responsibilities to the Planning Department. A preliminary plan is required for multi-family residential, large retail establishments (cumulative gross square footage exceeds 50,000 square feet), and for properties located within the Transportation Corridor Overlay District that have been rezoned since June 13, 2001. All other site plans do not require preliminary review and final construction plans may be submitted directly to the Department of Public Works.

A preliminary subdivision plan is required when a parcel of land is subdivided into more than five lots, or when a new street or public utility extension must be constructed to serve a newly subdivided parcel. This review is intended to ensure that the subdivision meets all design criteria established by the city of Chesapeake's Subdivision Ordinance.

A final Site Plan is required to be submitted to the city's Department of Public Works for any construction, use, change in use, or other development in all zoning districts, including fixed public facilities. Public Works distributes the plans to applicable city departments for review for conformity with the approved preliminary plan (if applicable), and with all other applicable provisions of the relevant ordinances, regulations, and policies applicable to the site. A SWM facility maintenance agreement must be signed prior to plan approval.

The Development Engineering Section of the Development and Permits Department is responsible for review of E&S controls and SWM facilities on site plans. If the final site plan meets all relevant requirements, Public Works will issue an approval letter. If any department finds the plans deficient, Public Works will prepare a review letter detailing aspects of the plan that require revision prior to approval. Once final site plan approval is obtained, the applicant must post a permit bond and obtain all permits consistent with the plan approval. This may include Land Disturbing and Stormwater Permits.

Based on an office discussion with city staff members and limited records review, no inconsistencies between the city's Structural and Source Control Measures Program for Site Plan Review and the permit were identified.

#### **III.B.2.** Structural Controls Maintenance Inspections

#### **Public Controls**

The city has approximately 350 public SWM facilities. City representatives stated that the public SWM facility inspection program was initiated in the early 1990s. The city's goal is to inspect the public facilities at a minimum of one time per year on a rotating basis. The city tracks the SWM facilities in a Microsoft Excel spreadsheet and is working on getting the structures into a web-based system which is expected to be completed by the time the city receives their renewed permit.

Representatives from Stormwater Management attend the final construction inspection for public projects to ensure that the SWM facilities are adequately installed and are clean prior to acceptance of the structure by the city. Stormwater Management also receives as-built drawings of the structures for reference during future inspections.

Staff from Stormwater Management utilize a checklist to document the condition of SWM facilities during annual inspections. Information from the checklists is input into the tracking spreadsheet for future reference. If deficiencies are noted during an inspection, staff from Stormwater Management prepare work orders for public works staff to correct the deficiency (i.e., cleaning and repair) and work with public works through completion of the corrective action.

#### **Private Controls**

City representatives stated that the city has approximately 656 private SWM facilities and 34 SWM facilities under the control of the school system. School system facilities are treated as a private entity and are subject to a stormwater utility fee. City representatives explained that the total number of private SWM facilities may include a number of old maintenance agreements for non SWM facilities such as right-of-ways.

The city of Chesapeake requires that owners of private SWM facilities sign agreements and accept responsibility for maintaining their SWM facility. The SWM facility maintenance agreement is a Memorandum of Agreement (MOA) between the city's Department of Engineering and the SWM facility owner. The MOA requires the owner to perform routine maintenance and maintain documentation of maintenance. The MOA is recorded with the property deed to ensure that maintenance obligations are legally binding in perpetuity or upon transfer of ownership.

The city's Stormwater Management Division is responsible for maintaining the agreement on file and enforcing the agreement. City representatives stated that the private SWM facility inspection program was initiated in 2007 and that an MOA with the public school system became effective in 2005. The city's goal is to inspect the private facilities once every five years, on a rotating basis.

Staff from Stormwater Management use a checklist to document the condition of private SWM facilities during inspections, which is slightly different than the checklist used for public SWM facilities. City representatives explained that all information is kept in hard copy files and that the information collected during the inspections is not input into a tracking spreadsheet or other type of tracking device for future reference (i.e., for tracking consistency with the inspection schedule, evaluation of frequency based upon compliance issues, etc.). However, if deficiencies are noted during an inspection, staff from Stormwater Management follow a process which is intended to ensure that the deficiencies are corrected.

According to city representatives, the city has established the following procedures for follow-up of private facilities:

- 1. Verbal discussion with SWM facility owner
- 2. Formal letter from the city citing agreement requirements and deficiencies
- 3. Formal letter from the City Attorney

The city's Stormwater Ordinance, Chapter 27, Article 8, was updated in 2008 to provide the city with the authority to conduct repairs on private SWM facilities in the event that the owner was not responsive to required corrective actions. Prior to 2008, the authority had only been granted under the MOA.

#### III.B.3. Structural Controls Site Visits

On June 17, 2010, the EPA inspection team conducted three SWM facility site visits; details of the site visits are provided below. All referenced photographs are contained in Attachment 4, Photograph Log.

#### Site: 7-Eleven (120 George Washington Parkway, Chesapeake, VA)

7-Eleven owns and operates a convenience store and vehicle fueling station which is located across a four lane roadway and approximately 150 feet from the Great Dismal Swamp Canal. The entire property consists of approximately 3.25 acres, of which approximately two-thirds appeared impervious on the site plan. The site consists of a parking lot with a fueling station, one building, a Filterra® stormwater treatment unit (Photographs 1 and 2), a grassy swale (Photograph 3), and a dry stormwater management pond (Photographs 4 and 5). The stormwater management pond appeared to serve more of a water quantity control function rather than water quality control as low volume stormwater flow was not detained in the pond. The pond was equipped with a small concrete low flow channel running through the center of the pond (Photograph 5) to the pond's overflow structure. The overflow structure did not appear to detain low volume flows as a small flow was noted entering the pond and exiting the pond through a low flow discharge port on the overflow structure, resulting in a negligible amount of detention time. The pond outlet structure and grassy swale appeared to discharge to a private drainage easement ditch along the western property border (Photograph 6); however, design drawings of the structures were not provided to the EPA inspection team by the city. The site visit was impromptu and therefore no inspection records or site plans were available for review during the site visit.

The City SWM Facility Maintenance Inspector and the EPA inspection team inspected the stormwater pond inlet, the grassy swale, the Filterra® system, and the drainage easement. During the site visit, the EPA inspection observed that a small amount of flow containing a sheen was entering and exiting the pond with minimal detention time (Photograph 7).

The EPA inspection team requested a copy of the site plan review documents, the maintenance agreement and previous inspection reports. The city provided site plan review documents, a maintenance agreement, and inspection reports for an inspection which occurred subsequent to the EPA inspection on June 17, 2010. The Structural Control Maintenance MOA was signed, dated and notarized on September 6, 2007 as part of the site plan.

#### Site: Elmwood Landing Subdivision (Mishannock Way, Chesapeake, VA)

The Elmwood Landing Subdivision is a residential neighborhood with a public stormwater lake surrounded by homes (Photographs 8 and 9). City representatives explained that the lake is considered to be public, because the lake receives stormwater from public roadways. The city maintains an access easement in the southern corner of the lake along the eastern border of the property at 434 Mishannock Way.

Upon arrival at the site, the City SWM Facility Maintenance Inspector indicated that he had conducted the last several annual inspections and described the process used during those inspections. The City SWM Facility Maintenance Inspector and the EPA inspection team did not conduct a comprehensive review of the lake's perimeter due to access restrictions, but discussed the drainage patterns of the lake. No physical issues were noted; however, during the GIS review portion of the EPA inspection it was noted that the drainage patterns discussed at the site were incorrect. Therefore it did not appear that the City SWM Facility Maintenance Inspector had a clear understanding of the design of the lake.

According to documentation provided by the city, the city conducted annual inspections of the pond. The last inspections were conducted on October 15, 2007, November 20, 2008, and October 4, 2009. Documentation of the inspections provided by the city to the EPA inspection team indicated that the pond was in compliance with city standards at those times.

#### Site: Ashdon Commerce Center (315, 317, and 319 Great Bridge Boulevard, Chesapeake, VA)

The Ashdon Commerce Center (Photograph 10) consists of a small commercial development surrounding a small wet stormwater pond (approximately .29 acres) to accommodate drainage from the development (Photograph 11). The commerce center contained approximately 5 buildings and impervious parking areas surrounding the pond.

The City SWM Facility Maintenance Inspector indicated that he had conducted the most recent inspection of the development and described the process used during that inspection. The City SWM Facility Maintenance Inspector and the EPA inspection team conducted a comprehensive review of the lake's perimeter. Overall, the pond appeared to be in good operational condition; however, one small side slope failure was noted by the city's inspector (Photograph 12).

According to documentation provided by the city, the city conducted an inspection of the pond on March 27, 2008, and indicated that the pond was in compliance with city standards and that the water quality was "Pristine."

The EPA inspection team requested a copy of the maintenance agreement and previous inspection report. The city provided a maintenance agreement and an inspection report for an inspection which occurred on March 17, 2008. The Structural Control Maintenance MOA was signed, dated and notarized on June 16, 2003.

# Observation 1. The city of Chesapeake is not tracking and inspecting private SWM facilities as required by the city's MS4 Program Plan.

Permit Part I.A.1.a requires the city of Chesapeake to "utilize structural and source control measures to reduce pollutants that are discharged through the municipal separate storm sewer system in storm water runoff from commercial and residential areas, including a schedule for implementing the controls." Part I.A.1.a.(2) further requires the city to "adhere to and, where applicable, enforce all those components of the Comprehensive Plan, the Storm Water Management Master Plan, and all storm water related ordinances pertaining to development and redevelopment in the city of Chesapeake."

Section 7.3 (Maintenance Inspection and Compliance) of the MS4 Program Plan requires the city to develop a program to randomly inspect private SWM facilities to ensure that necessary maintenance is performed in order to better protect water quality. In addition, Departmental Regulation 751 (Private Stormwater Facility Inspection), dated May17, 2006, requires that the city inspect all private SWM facilities with recorded maintenance agreements at least once every five years.

At the time of the inspection, city staff explained that they had not yet identified all private SWM facilities and had not yet developed a mechanism to track the inspections of the SWM facilities. City representatives stated that a review of each of the approximate 656 SWM facilities had not been completed to identify which and how many of the SWM facilities are actually related to stormwater as the list may include a number of old maintenance agreements for non-SWM facilities (i.e., right-of-ways). It was implied that the total number of facilities was derived from a count of hard copy files. A complete listing of the 656 SWM facilities had not been compiled in tabular form and the inspections completed to date were not tracked to ensure that the city is inspecting each of the SWM facilities once every five years. Since records of inspections are not maintained in an organized manner, it was unclear how many inspections were completed and how frequently inspections are being conducted. As stated previously, the private SWM facility inspection program was initiated in 2007 and the city feels that its tracking of private SWM facilities has significantly improved since the inception of the program.

#### III.C. Requirement I.A.1.b – Unauthorized Discharges and Improper Disposal

Part I.A.1.b of the permit contains requirements for unauthorized non-stormwater discharges and improper disposal, which the city addresses through a program herein referred to as its Dry Weather Screening Program. The city's Dry Weather Screening Program and the applicable permit requirements are discussed below.

#### III.C.1. Dry Weather Screening Program

The city currently has seven staff members available to perform dry weather screening inspections. Other responsibilities spread amongst the inspectors include erosion and sediment control inspections, complaints response, impervious area verifications, wetlands management, and best management practice inspections.

The Stormwater Management Division's Environmental Engineering Specialist serves as the City Dry Weather Screening Supervisor. She indicated that the city has approximately 1,000 manholes. As specified in the MS4 Program Plan, the city purposes to inspect 25 manholes a year. Approximately 20 to 25% of all of the manholes have been inspected in the last ten years. The city does not conduct dry weather screening at outfalls. The supervisor indicated that water is typically present in the manholes throughout the city of Chesapeake due to groundwater infiltration and field sampling is not conducted each time water is observed in manholes. Therefore the city primarily conducts dry weather screening to identify maintenance issues with the manholes and to meet the permit requirement.

The city has considered targeting industrial and commercial areas for dry weather screening inspections; however, during routine surveillance for illicit discharges by both the City Dry Weather Screening Inspectors and other Public Works Department employees, the city has discovered many issues in residential areas.

## Observation 2. The city of Chesapeake is not prioritizing industrial and commercial areas for dry weather screening inspections.

Part I.A.1.b.2 of the permit requires that priority for field screening procedures "shall be placed on segments of the storm sewer system which receive drainage from industrial and commercial sources". However, city staff indicated that dry weather screening sites conducted in residential, industrial and commercial areas, are selected randomly.

#### **III.C.2.** Dry Weather Screening Inspections

The city requires at least 72 hours without rainfall prior to conducting dry weather screening. The dry weather screening staff spread the 25 required dry weather screening inspections over the year. The City Dry Weather Screening Supervisor indicated dry weather screening staff are rotated so different personnel perform inspections each year. The City Dry Weather Screening Inspector identifies an area to inspect by choosing an area that has not previously been inspected. Inspections are conducted according to the city's *General Guidelines for Dry Weather Field Screening Program* which includes detailed guidelines on the necessary equipment, as well as procedures for conducting the inspection, performing field tests, and completing documentation. The supervisor indicated that inspectors typically do not take maps on dry weather screening inspections and stated the current inspector has 15 years of experience in stormwater or related areas for the city of Chesapeake.

After arriving at the screening location, the City Dry Weather Screening Inspector identifies whether any manhole lids are missing or cracked as well as if any structures are cracked or caved in. Additionally, the inspector determines whether the manhole needs to be cleaned by identifying whether flow would be blocked or if sediment has accumulated to 10% of the height of the manhole. The inspector completes all the required information on the inspection report including the type of basin, pipe size, and materials of construction. The inspector looks in the manhole to identify the color of the water and any scum or sheen present. The inspector may use a flashlight if necessary but he does not take a sample and view it outside of the manhole. If any odor is present, the inspector would ask the Department of Public Utilities to take a sample. The inspector also takes a photograph and draws a diagram of the manhole. If other manholes are located nearby (e.g., at another corner of the same intersection), the inspector will inspect the other manholes as well. The inspector will note observations on all such manholes on the original inspection sheet and the group of manholes inspections will be counted as one inspection toward the MS4 Program Plan requirement.

Due to the shallow water table in the Chesapeake area, water is typically present in the manholes. Since water is typically present, the city inspectors do not to take samples or conduct field tests. As a result, the city no longer maintains a field testing kit and the associated chemicals. The City Dry Weather Screening Supervisor indicated that the kit was not used and replacing expired chemicals with new chemicals had become an unjustified cost.

### Observation 3. The city of Chesapeake is not taking samples and conducting field tests when standing water is observed in a storm sewer inlet.

The City Dry Weather Screening Supervisor indicated that it is typical for standing water to be present in manholes due to the shallow water table and therefore samples are not taken by inspectors unless flow is visible. Since illicit discharges may be small in comparison to the volume of standing water present, flow

may be difficult to detect. By not performing field testing, the city is not fulfilling its permit obligation to "detect... unauthorized non-storm water discharges and/or improper disposal into the municipal separate storm sewer system".

#### III.C.3. Dry Weather Screening Tracking and Follow Up

The City Dry Weather Screening Supervisor stores completed dry weather screening inspection reports in a binder. The City Dry Weather Screening Inspector will review the reports to determine which areas have been inspected already. A mapping system (e.g., GIS) is not used to track inspections. Additionally, manholes are not assigned numeric IDs, but are instead identified by the nearest street address or intersection.

If the City Dry Weather Screening Inspector identifies a maintenance issue at the inspection site, the Department of Public Works' Operations Division will be notified. The maintenance issues are tracked by Operations in a work order system entitled "Maximo". The City Dry Weather Screening Supervisor does not follow up with Operations to confirm that the maintenance issue has been resolved; however, she stated that work orders in the Maximo tracking system are closely monitored by city supervisors.

If potential illicit discharges are identified, the issue will be entered into the Customer Service Requests (CSR) database, which is also used to track citizen complaints and spills. All stormwater-related issues are assigned to the City Dry Weather Screening Supervisor to resolve. Since the CSR database is citywide and is used for tracking a variety of issues, the City Dry Weather Screening Supervisor also maintains a personal database with key information to ensure problems are resolved. The supervisor and her staff will coordinate with the Fire Department as needed to resolve issues. While no illicit discharges have been detected through dry weather screening during the supervisor's tenure, the supervisor estimated that she communicates with the Fire Department approximately once a month regarding stormwater issues. For issues taking multiple days to resolve, the supervisor will continue to update the CSR database with any relevant information until the issue is resolved and closed in the database. Additionally, the supervisor keeps hard copy files of each closed issue.

#### III.D. Requirement I.A.1.c - Runoff from Industrial and Commercial Facilities

Part I.A.1.c of the permit contains requirements to monitor and control pollutants in stormwater discharges from certain industrial and commercial facilities, which the city addresses through a program herein referred to as its Industrial Inspection Program. The city's Industrial Inspection Program and applicable permit requirements are discussed below.

#### **III.D.1.** Industrial Inspection Program

The City Department of Public Works relies on the Fire Department to conduct industrial and commercial facility stormwater inspections. The Stormwater Management Division's Environmental Engineering Specialist maintains regular communication with the Deputy Fire Marshal as well as the Fire Department's Environmental Quality Manager to ensure any stormwater related issues resulting from industrial inspections are resolved. While Stormwater Management's Environmental Engineering Specialist does not attend all of the Fire Department's inspections, she estimates she spends approximately 20% of her time with the Fire Department or City Dry Weather Screening Inspectors responding to stormwater issues in the field.

The Fire Department's authority to conduct inspections is derived from the 2006 International Fire Code and the 2006 Virginia Statewide Fire Prevention Code (SFPC). The SFPC does not specifically address stormwater. The Fire Department primarily records stormwater issues under Chapter 27, Hazardous Materials. Fire Department inspectors may also use the industry-specific sections of the SFPC where applicable. For example, during the EPA inspection team's visit to the Waste Management facility, the

Deputy Fire Marshal identified issues in the facility's vehicle repair garage and used SFPC Chapter 22, Repair Garages, to record the issues. See Section III.D.1 of this report for additional details regarding this specific site visit.

The Fire Department has eleven (11) inspectors who are responsible for the inspection of Chesapeake's industrial and commercial facilities. There are over 7,000 industrial and commercial facilities subject to fire code compliance. Seven (7) of the eleven inspectors are Fire Law Enforcement Officials who are authorized to enforce any city code. Fire Department inspections are prioritized by life safety. It is the goal of the Fire Department to inspect each facility every 1.5 to 1.75 years. Approximately 200 to 300 are industrial facilities and 125 facilities file Tier 2 reports as required by the Emergency Planning and Community Right-To-Know Act. Fire Department representatives present during the inspection stated that none of those facilities are known to be contributing substantial loadings to the MS4. The Fire Department representatives indicated that if a discharge is identified during an inspection, the Virginia Department of Environmental Quality (VADEQ) and the city's Department of Public Works will be contacted. Fire Department inspectors also examine materials storage, battery storage, flammables, grease traps, and open containers.

#### **III.D.2.** Industrial Facility Site Visits

On June 16 and 17, 2010, the EPA inspection team witnessed a series of industrial facility inspections performed by the City Deputy Fire Marshal. Summary observations pertaining to the sites are presented below.

# Site: Southeastern Public Service Authority (SPSA) Recycling Facility – 921 Professional Place, Chesapeake, VA

The SPSA Recycling Facility at one time provided curbside recycling services to the city of Chesapeake. However, at the time of the EPA inspection team's visit, the curbside recycling program had been taken over by a private contractor and the SPSA Recycling Facility was in the process of permanently shutting down. The last inspection at the site was in October 1998. The Deputy Fire Marshal proceeded to conduct an inspection of the indoor office area, warehouse/garage, and the outdoor parking and storage area. During the inspection, the Deputy Fire Marshal noted the following issues:

- Heavy oil build up was present in the truck parking area (Photograph 13) in the vicinity of storm sewer inlets. The Deputy Fire Marshal stated during the site visit and recorded in the inspection report that an action plan for mitigation of the oil spills is required (Exhibit 1, SPSA Inspection Report). The facility was instructed to submit the action plan to the Fire Marshal's office.
- Storm sewer inlet protection was compromised throughout the parking area (Photographs 14 and 15). In addition, a buildup of muddy material and trash were located near one of the inlets and vegetation had grown over silt fence placed around the inlets. The Deputy Fire Marshal further noted that the absorbent socks placed around the inlets were full and in need of replacement.

#### Site: Baldwin Auto Disposal – 404 Freeman Avenue, Chesapeake, VA

Baldwin Auto Disposal primarily receives and stores disabled vehicles and vehicle parts. The site consists of an office trailer, a small indoor area primarily used for storage, and an outdoor yard. The yard is sectioned into storage areas for various car parts and fluids and also includes a car crusher, weigh scales, and a fluid draining area. The facility drains to a stormwater ditch. The last inspection at the facility was conducted in February 2008. The Deputy Fire Marshal began the inspection by asking for permits and reviewing the Hazardous Material Plan, then proceeded to inspect the entire yard and indoor areas. The Deputy Fire Marshal concluded the inspection by reviewing the site's *General VPDES Permit for Discharges of Storm Water Associated with Industrial Activity* (9VAC25-151, Registration No.

VAR051676) and Stormwater Pollution Prevention Plan (SWPPP). The inspection report is provided as Exhibit 2. During the inspection, the Deputy Fire Marshal and the City Environmental Quality Manager noted the following issues:

- A brown and white spill was present near the perimeter of the site (Photograph 16). The location of the spill was in close proximity to the storm drainage ditch. The Deputy Fire Marshal instructed the facility staff to clean up the spill and to walk the entire ditch to determine if any spills had reached the ditch.
- A wide drainage ditch present on site was filled with muddy water (Photograph 17). Hay bales
  were placed in the ditch to collect oil. The bottom halves of the hay bales were coated in mud.
  The ditch drained off site. The Fire Department representative inquired about the site's SWPPP
  and stated that the SWM facility should be monitored closely.
- Multiple, large water puddles were present on site (Photographs 18 though 21). Large debris, vehicles, and appliances were located in one such puddle (Photographs 19 and 20). An oily sheen (Photograph 21) was present on the puddle which was situated near a large pile of fuel tanks (Photograph 22). The Deputy Fire Marshal stated that he would alert VADEQ to the oil sheen on the puddle.
- Oil spill drying material on site had not been cleaned up (Photographs 23 through 25). Facility
  personnel indicated that the material is spread around as a preventative measure in case a spill
  occurs, not to absorb a spill after it occurs. Additionally, facility staff indicated that no oil-water
  separator was present on site.
- Secondary containment around a large, single-walled waste oil tank had failed (Photographs 26 and 27). The City Environmental Quality Manager instructed the facility personnel to restore the secondary containment.
- A pit was located underneath the weigh scale (Photograph 28). Facility staff stated that the pit was pumped out onto the yard. The Deputy Fire Marshal instructed the staff to pump out the pit into a tank and recycle it for the time being. Additionally, the Deputy Fire Marshal stated that the facility should either take samples of the water in the pit prior to discharge or fill in and close the pit.
- Car batteries were left outside and uncovered near the facility office (Photograph 29).

Additionally, the EPA inspection team noted the following issues:

- An open dumpster containing trash was present on site (Photograph 30).
- Mud and sediment had been tracked through the entrance on to the road (Photograph 31).

#### Site: Waste Management of Hampton Roads - 3016 Yadkin Road, Chesapeake, VA

Waste Management handles trash collection and disposal in the city of Chesapeake. The EPA inspection team visited the facility where trash collection is managed and vehicles and equipment are serviced and maintained. The facility includes office buildings, a fueling station, a painting facility, a dumpster storage area, a vehicle maintenance garage, and a truck parking area. The outside area drains to a storm ditch. The Deputy Fire Marshal began the inspection in the office buildings, proceeded to the fueling station, paint facility, and storage area, and then visited the garage and parking area. At the end of the inspection, the Deputy Fire Marshal reviewed the permits and stormwater management documents for the facility. The inspection report is provided as Exhibit 3. During the inspection, the City Deputy Fire Marshal and the City Environmental Quality Manager noted the following issues:

- The secondary containment for four above ground storage tanks was full of dirty water (Photograph 32). Facility personnel indicated that the tanks were empty. The Deputy Fire Marshal stated that the tanks should be removed.
- Heavy oil staining was present in the truck parking area (Photograph 33).

Additionally, the EPA inspection team noted the following issues:

- Paint from inside the paint facility had seeped under the building walls and had reached the outside (Photographs 34 through 36).
- Oil staining was present around a waste oil tank in the vehicle maintenance garage. Oil appeared to be seeping underneath the walls potentially reaching the outside (Photograph 37).
- A large plastic container containing "Industrial Deodorant Concentrate" was located on a grassed area with no secondary containment (Photograph 38). Vegetation near the container's spout was dead.
- A plastic drum containing a blue liquid was actively spilling onto a paved area outside (Photograph 39). The liquid had flowed over pavement in multiple directions towards a grassed area and the parking area (Photograph 40). There was no evidence that an effort to stop and/or contain the spilled material was underway.

The EPA inspection team requested the inspection report from the last inspection conducted at the facility; however, the city provided instead documentation of the resolution of an oil spill at the facility in December 2005.

## Observation 4. The city of Chesapeake is not conducting regular industrial inspections at facilities with the potential to contribute substantial pollutant loadings.

The City Fire Department Inspectors conduct stormwater inspections in conjunction with their regular fire inspections. The Fire Department has a prioritization scheme for its inspections based on the potential fire hazard; stormwater issues are not used as a basis for the prioritization process. The EPA inspection team accompanied the City Deputy Fire Marshal during his inspection of Baldwin Auto Disposal. The Deputy Fire Marshal identified numerous stormwater issues on site including exposed batteries, oily sheen on stormwater present on site, oil spills, oil drying material that had not been cleaned up, and breaches in existing secondary containment. Despite the numerous issues noted, the site had not been inspected since 2008. Additionally, stormwater issues were noted at the SPSA Recycling Facility which had not been inspected since 1998 and the Waste Management of Hampton Roads Facility was last visited in 2005. Since the city relies on the Fire Department to conduct stormwater inspections and inspections are not conducted on a regular basis, the city is failing to "monitor and control pollutants in storm water discharges from... facilities... contributing substantial pollutant loadings" as required by Part I.A.1.c of the permit.

The Fire Department's 11 inspectors are responsible for inspecting over 7,000 facilities. The thorough inspections necessary to identify stormwater issues in addition to SFPC violations can be time-consuming. During the EPA inspection, the inspection of SPSA Recycling Facility took 50 minutes, Baldwin Auto Disposal's inspection took 1 hour and 10 minutes, and Waste Management of Hampton Roads' inspection took 2 hours. The Deputy Fire Marshal completed inspection paperwork after the inspections and has other responsibilities including responding to citizen complaints and spills, conducting follow up inspections, and carrying out enforcement actions.

#### III.D.3. City-owned Industrial Facilities

The city-owned industrial facilities are located on 19 municipal yards which are inspected quarterly by city staff. On June 16, 2010, the EPA inspection team visited three of the industrial facilities: the City Garage, the Butts Station salt storage and stockpile area, and the City Traffic Operations Facility. The three facilities drain to the city MS4.

#### Site: City Garage

The City Garage is responsible for maintenance of city vehicles including police cars, construction equipment, dump trucks, etc. In addition to the indoor garage, the site includes paved and unpaved parking areas for storing vehicles. The EPA inspection team made the following observations during the site visit:

- Oil stains and oil spill drying material were observed around the site (Photographs 41 through 43). The City Environmental Quality Manager stated that oil spill drying material is typically cleaned up within a day.
- Staining underneath piping near the coolant tank (Photograph 44) was observed. The City Environmental Quality Manager indicated that leaks in this location were a recurring issue and are monitored regularly by city staff.
- Sediment was accumulating along a curb and in front of a storm sewer inlet (Photograph 45). The City Environmental Quality Manager noted this issue in her inspection report and stated repairs would be required (Exhibit 4, City Garage Inspection Report<sup>2</sup>).

#### Site: Butts Station – Streets and Highways

The Streets and Highways section of Butts Station stores salt, sand, and gravel and maintains a brine tank. While only a few of the stockpiles were covered, the city had taken measures to prevent stockpile materials from entering the storm sewer inlets and surface water during storm events. Storm sewer inlets were barricaded by cinder blocks lined with silt fence and wire mesh fence. Gravel was placed along the outside of the silt fence to hold the cinder block structure in place (Photograph 46). Additionally, the city placed silt fence between the stockpile area and the nearby surface water. The EPA inspection team made the following observations during the site visit:

- Oil staining was observed in the truck parking area (Photograph 47).
- Storm sewer inlets in the parking area were not protected.
- No bollards or secondary containment were located around the brine tank and its pump, which were located next to the facility's driveway and parking area (Photographs 48 and 49). Additionally, the tank control valve was in the "On" position.

#### Site: City Traffic Operations Facility

The City Traffic Operations Facility uses and stores paint on site. The facility drains to a drainage ditch (Photograph 50). The EPA inspection team made the following observations during the site visit:

- Uncovered dumpsters containing trash and debris were located outside (Photograph 51).
- Trash and debris, including torn sand bags, were observed (Photographs 52 through 55).
- Dirty paint trays and paint drum lids were observed throughout the site (Photographs 55 and 56).
- Paint spills were located around the facility grounds (Photographs 57 and 58). In one area, paint had spilled over a bermed containment area and onto the surrounding grass (Photograph 59).
- An unpermitted, unauthorized vehicle washing area was located on site (Photographs 60 and 61). The City Environmental Quality Manager stated that she was unaware the washing area existed and that the facility should be using the dedicated wash rack at the City Garage.

<sup>&</sup>lt;sup>2</sup> The inspection report provided by the city of Chesapeake is incorrectly dated June 15, 2010. The inspection actually occurred on June 16, 2010.

## Observation 5. The city of Chesapeake is not prohibiting non-stormwater discharges from the MS4 originating from the city's municipal facilities.

During a site visit to the city's municipal yard, the EPA inspection team observed numerous stormwater issues. At the City Garage, the EPA inspection team noted oil staining, oil spill drying material that had not been cleaned up, and staining near the coolant tank. These issues were not included in the City Environmental Quality Manager's report. Also, at Butts Station, no bollards or secondary containment were present around a brine tank and pump to prevent truck accidents and spills. Additionally, while the pump was not operating, the control valve on the tank had not been turned off. The City Environmental Quality Manager resolved this issue while on site. Near the truck parking area, the EPA inspection team noted oil stains which the City Environmental Quality Manager did not note on her inspection report (Exhibit 5, Butts Station Inspection Report<sup>2</sup>).

The EPA inspection team also visited the Traffic Operations facility. The EPA inspection team observed uncovered dumpsters containing trash and debris located outside, torn sand bags, paint tracked around the facility, dirty paint trays and paint drum lids, and paint that had spilled over a bermed area onto grass. None of these issues were included in the City Environmental Quality Manager's inspection report (Exhibit 6, Traffic Operations Inspection Report<sup>2</sup>). The EPA inspection team also observed an unpermitted vehicle washing area draining to the MS4. The City Environmental Quality Manager did not note the washing area until prompted by the EPA inspection team.

#### III.E. Requirement I.A.1.d – Runoff from Construction Sites

Part I.A.1.d of the Permit addresses requirements for the structural and source controls program for construction sites. Within this program area, the inspection was focused on the city's routine inspections and site operator training. The city's Erosion and Sediment Control Program (E&S Program) is implemented by the Department of Development and Permits (E&S associated with subdivisions and commercial development) and the Stormwater Management Division (E&S associated with residential and commercial building construction). The Departments of Development and Permits and Stormwater Management utilize the city's "Standard Operating Procedure (SOP) for Erosion & Sediment Control Minimum Standards Inspection" document to guide inspection activities (Exhibit 7, E&S Inspection SOP). A review of the guide indicates that it is slightly outdated and is in need of revision (refer to Observation 9 for further discussion). The EPA inspection team's observations related to this section of the permit are discussed below.

#### **III.E.1.** Routine Construction Site Inspections

#### In-fill and Recorded Lots

The city's Stormwater Management Division acts as the principal E&S coordinating entity for the city. The division has three dedicated inspectors, a manager, and three other staff members that conduct inspections when necessary (Engineering Technicians). Stormwater Management E&S Inspectors are responsible for routine E&S inspections of in-fill lots and the recorded lots within subdivisions where the utility improvements have been activated for water and sewer connections to individual lots. According to city representatives, Stormwater Management E&S Inspectors field verify referrals by other departments/divisions and issue notices to comply and issue stop work orders (SWOs) if necessary. City representatives stated that the review of E&S controls is the primary duty of the three dedicated inspectors. City representatives explained that at the time of the audit, the city was issuing approximately 30 building permits per month with an average of approximately 100 active permits at any one time. Four of the Stormwater Management staff are Conservators of the Peace and are therefore authorized to issue SWOs and carry badges.

A city representative stated that once a building permit is issued for a lot, an inspector would conduct an E&S inspection at a minimum of every two weeks and within 48 hours of a runoff-producing storm event of 0.5 inches, unless an E&S issue was reported. A Stormwater Management E&S Inspector stated that E&S inspections are documented one of two ways. If no E&S issues are noted at the lot, the inspection is documented in a "Stormwater Technical Services Daily Activity Log." If E&S issues are noted, the inspector verbally communicates the issues to on site representatives and completes an Erosion and Sediment Control Minimum Standard (MS-19) form (Exhibit 8, MS-19 Form) and sends the completed form to the responsible party with a corrective action deadline (usually two days).

#### Subdivisions

The city's Department of Development and Permits has nine (9) inspectors responsible for inspections of land disturbing activities at residential and commercial subdivision sites during infrastructure installation. City representatives explained that the Department of Development and Permits Inspectors' primary duty was the review of infrastructure installation (i.e., utilities, pump stations, etc.). The review of E&S controls are not the primary responsibility of these inspectors.

The city requires developers to attend a preconstruction meeting with representatives from the Department of Development and Permits at the site prior to major land disturbance. A city representative stated that the city had approximately 25-30 active subdivisions and commercial construction sites at the time of this EPA inspection and that the inspectors from this division were divided geographically. Each of the nine inspectors may be responsible for as many as five sites at various stages of construction at any one time. The inspectors attempt to visit each of their sites every workday; however, a comprehensive review of the site (i.e., perimeter review or all active areas of construction) for the 19 minimum standards was not always a part of the attempted daily site visit. The inspectors explained that they attempted to conduct a comprehensive E&S inspection at a minimum of every two weeks and within 48 hours of a runoff-producing storm event of 0.5 inches, unless an E&S issue was identified during review of infrastructure construction. It is noted that five years prior to the EPA inspection the city had approximately 15 to 16 inspectors for approximately 75-90 sites.

#### **Public Linear Projects**

The city's Department of Public Works inspects linear capital improvement projects. Section 6.7.1 of the MS4 Program Plan, discusses the requirements for inspections and enforcement. The EPA inspection team briefly discussed this topic during the inspection; however, no field site visits or documentation review were conducted to verify the verbal explanation of the program.

#### **III.E.2.** Active Construction Site Visits

On June 17, 2010, the EPA inspection team conducted one site visit to an active construction site; details of the site visit are provided below. All referenced photographs are contained in Attachment 4, Photograph Log.

#### Site: Culpepper Landing (Southern End of Mill Creek Parkway, Chesapeake, VA)

Culpepper Landing (Photograph 62) is a 485 acre community adjacent to the Great Dismal Swamp National Wildlife Preserve (to the south) and the Great Dismal Swamp Canal (to the East). The planned community is expected to consist of single and multi family homes, a 160-acre conservation area, walking trails, a marina, an amphitheatre, commercial space, numerous parks or open space areas, and has a designated area for the future construction of an elementary school. Exhibit 9 contains a site plan layout for the community. At the time of the EPA inspection team site visit, single family homes had been constructed in the north eastern portion of the site, single family homes were under construction in the northern section of the site (just west of the entrance road) (Residential Area) and clearing and grading

was occurring in the southeastern portion of the site (Subdivision Area). Five wet stormwater ponds and two-several hundred foot long, tidally influenced, "outfalls" had been constructed. The community features seven homebuilders.

#### Residential Area

Two wet ponds are located in the northern portion of the site on either side (east and west) of the entrance road to the community (Mill Creek Parkway). The ponds appeared to be fully stabilized and complete. The two ponds are interconnected and the eastern most pond discharges to the Great Dismal Swamp Canal through a constructed outfall located in the northeastern portion of the development. The exact discharge location was not able to be viewed due to overgrown vegetation. Photographs 77 and 78 indicate the effluent quality near the discharge point from the outfall. The ponds on the east side of the entrance road appeared to be receiving stormwater from a mostly stabilized area occupied by townhouses and the pond to the west of the entrance road was receiving stormwater from an area with active construction of residential detached homes.

The following items were noted during the EPA inspection team visit to the Residential Area with the Stormwater Management E&S Inspectors:

- Lots that did not appear to be under active construction were not stabilized (Photographs 63 and 64).
- E&S controls were not installed prior to the start of home building activities (Photographs 65 and 66).
- Construction best management practices (BMPs) to prevent sediment from entering several storm drain inlets along the roadway were not implemented (Photographs 67 through 70).
- Sediment had been tracked into the roadway (Photograph 71).
- A sanitary toilet was not secured to prevent it from tipping and releasing the contents of the toilet (Photograph 72).
- A trench was dug on a residential lot to drain water from the structure to the street (Photograph 73).
- Sediment had accumulated in a roadway near the stormwater pond (Photographs 74 through 76).

It was noted that the Stormwater Management E&S Inspectors interviewed were not aware of the drainage patterns of the storm sewer surrounding the residential lots in the Culpepper Landing subdivision, including the discharge location of the unprotected roadway storm drains. The Stormwater Management E&S Inspectors stated that the inspection of roadways was not their responsibility and that they had no authority in the roadways; however, it is important for the inspectors to understand what the drainage patterns are, what SWM facilities exist downstream, and the ultimate receiving surface water in order to adequately protect stormwater and receiving water quality. It appeared that the roadway storm drains discharged to the stormwater pond in the front of the community; however, no documentation or information was provided to verify the storm drain discharge locations into the pond and no storm drain outlets were identified on the banks of the pond in the immediate area.

#### Subdivision Area

Three additional wet ponds are connected in series to an outfall structure that discharges water to the Great Dismal Swamp. The first pond in the series is located approximately in the center of the development and is connected to the second pond in the series to the southeast and to the third pond farther to the southeast. The third pond is hydraulically connected to a several hundred foot long tidally influenced outfall (Photograph 90) that discharges to the Great Dismal Swamp. Photographs 92 through 94 indicate the effluent quality near the discharge point from the outfall. The ponds were observed to be receiving stormwater from unstabilized areas with two large soil stockpiles.

The following items were noted during the EPA inspection team visit to the Subdivision Area with the Department of Development and Permit Inspectors:

- A large percentage of the Subdivision Area was disturbed (i.e., contained little vegetation) where active construction was not occurring (Photographs 79 through 81).
- The subdivision area contained two large soil stockpiles that had not been stabilized or where stabilization had not been successful (both piles showed evidence of large rills and sedimentation) (Photographs 80 through 82).
- Silt fence surrounding one of the stockpiles was overwhelmed by sedimentation (Photograph 83).
- The second of two large soil stockpiles on site was not stabilized, was covered with rills, and there were no sedimentation controls between the stockpile and stormwater pond (Photograph 81).
- Inlet protection was noted near two inlets receiving runoff from the second stockpile; however, the protection was overwhelmed by a large amount of sediment (Photographs 83 through 87).
- Side slopes of the ponds and outfall were not stabilized resulting in erosion of the side slopes. The inspectors stated that the developer had attempted to stabilize the side slopes of the ponds and outfall with vegetation on at least three occasions, but that the attempts had not been successful as erosion of the side slopes was noted in numerous locations (Photographs 88 through 91).
- Turbid water was noted discharging from outfall structure (Photograph 92).
- An unapproved concrete washout location was noted near the second stockpile (Photograph 95).

Alternative construction BMPs had not been explored or suggested by the inspector to the developer. When questioned, the inspector's knowledge of alternative construction BMP types was limited.

## Observation 6. The E&S inspections conducted by the city of Chesapeake are not addressing non-sediment, construction site pollutant sources.

Permit Part I.A.1.d states that the city shall "...continue implementation and maintenance of structural and nonstructural best management practices to *reduce pollutants* in storm water runoff from construction sites [emphasis added]."

The City E&S Site Plan Reviewers and Inspectors (Development and Permits or Stormwater Management) have not been tasked with assessing construction site pollutant sources other than sediment-generating sources. The city has based their E&S Inspection Program on the city's Stormwater Management Ordinance under authority granted by the Virginia Erosion and Sediment Control Law. The Virginia Erosion and Sediment Control Regulations (VESCR) (4VAC50-30) have been promulgated to administer, implement, and enforce the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Virginia Code). However, the VESCR pertain only to "erosion and sediment control concerns," and mandate the adoption of erosion and sediment control programs by localities, which dictates the scope of the local program (Exhibit 10, VESCR). Chapter 26, Article 23, Article III (Erosion and Sediment Control) of the Chesapeake Code of Ordinances states that the city is authorized to implement Title 10.1, chapter 5, article 4 of the Code of Virginia, known as the Erosion and Sediment Control Law. Through discussions with the City E&S Site Plan Reviewers and Inspectors, it was determined that site plans and physical site conditions are only reviewed for E&S related information. The city's inspection checklist does not include a non-sediment component (Exhibit 8, MS-19 Form).

During the site visit to the Culpepper Landing construction site, two construction site pollutant sources other than sediment-generating sources were observed. An unsecured sanitary toilet was observed in the Residential Area (Photograph 72) and a concrete washout location that was not identified on the construction site plans was observed near one of the two large stockpiles in the Subdivision Area (Photograph 95).

Chapter 26, Article VIII (Stormwater Management) provides the city with the authority to assess non-sediment, construction site pollutant sources such as: construction chemicals; vehicle and equipment maintenance and fueling; paving and grinding; spill prevention and control; solid waste; concrete waste and wash water; and sanitary/septic waste (e.g., portable toilets).

# Observation 7. The city of Chesapeake is not enforcing proper construction erosion and sediment controls at the Culpepper Landing Development Construction Site.

Part I.A.1.d(1) of the permit requires that the city of Chesapeake enforce regulations pertaining to erosion and sediment control. However, the EPA inspection team observed that the City Inspectors (from Development and Permits and Stormwater Management) did not enforce proper construction E&S controls at the Culpepper Landing Development construction site.

During the physical review of the site, the EPA inspection team noted that storm drains in the residential construction area where individual lots were being constructed were not protected; concrete wash water was evident in an area that was not designated for such activity; large stockpiles were not stabilized or contained; a large portion of the site was not temporarily stabilized; and erosion was observed throughout the site. Several of these issues were identified in an April 6, 2010 routine E&S inspection of the site by the Department of Development and Permits, but had not been corrected as of the date of this inspection (over 10 weeks later).

It is also noted that there are areas that can get overlooked during inspections, due to a gap in responsibilities between the two E&S inspection departments. During a review of the home builder sites at Culpepper Landing, the EPA inspection team noted that roadway inlet controls were not in place and that lots without active building permits were not adequately stabilized. A Stormwater Management E&S Inspector stated that the responsibility of the roadways and lots without active building permits in the subdivision fell under the Department of Development and Permits, since Stormwater Management had no authority over areas without active building permits. The Department of Development and Permits Inspector stated that once a number of active building permits are issued, he no longer actively inspects that area of the subdivision. The Department of Development and Permits Inspector did not provide further clarification regarding the number of active building permits or percentage of lots that would trigger ceasing inspections of a portion of the subdivision.

### Observation 8. The city of Chesapeake does not have a training program to educate construction site operators.

Permit Part I.A.1.d(2) requires that "the permittee shall continue implementation of the education and training program for construction site operators." Furthermore, the city's MS4 Program Plan, Section 3.3 (E&S Control Education and Outreach) states that the city participates in HR STORM, a regional stormwater education initiative coordinated by the Hampton Roads Planning District Commission (HRPDC).

The city did not develop a training program to educate construction site operators, did not publicize training conducted by outside organizations or agencies including HR STORM, and did not publicize the state's certification programs to site operators.

# Observation 9. The city of Chesapeake's SOP "Erosion and Sediment Control Minimum Standards, Inspection and Enforcement" is not reflective of current operating procedures.

The city's SOP "Erosion and Sediment Control Minimum Standards, Inspection and Enforcement" is out of date and has not been revised to reflect current operations. The SOP was issued by the Public Works

Department in 2004 for construction site stormwater inspections and does not reflect actual operating procedures or the correct department names, due to city reorganization since issuance of the SOP.

The SOP and Erosion & Sediment Control Minimum Standard MS-19 form (an attachment to the SOP) (Exhibit 7, E&S Inspection SOP), states that the "Subdivisions" Department is responsible for conducting routine E&S inspection of subdivisions; however, the Department of Development and Permits is now responsible for the routine inspections of subdivisions.

SOP section "Duties, Subdivisions" (Item A.5, Page 5), states that if an E&S violation is noted during an inspection and identified on Part II of the MS-19 form, it shall not take more than 48 hours for an individual lot, or 72 hours for a subdivision, to return to compliance upon notification of noncompliance. The SOP further states that if the permittee had not corrected the issue of noncompliance within the specified timeframe the inspector would prepare a "Stop Work Order Placard and a Stop Work Order Letter" for issuance. City Inspectors stated that Stop Work Orders are rarely used and that verbal communication and cooperation with the permittees are more commonly used methods to achieve compliance, unless there is a significant issue of noncompliance. In Fiscal Year 2009-2010, the city documented 41 instances of noncompliance, but did not issue any Stop Work Orders. Further, a review of the Department of Development and Permit's documentation for the Culpepper Landing subdivision indicated issues of noncompliance that were originally identified during an inspection conducted on April 6, 2010 which had not been resolved as of the date of the EPA inspection. City Inspectors stated that they were continuing to work with the permittee and had not issued a Stop Work Order because of the "minor" nature of the issues.

It should be noted that the SOP and MS-19 forms do not require or specify the scope of the inspection (i.e., whether the entire site must be inspected, including a review of the perimeter and outfall(s)). The Department of Development and Permits Inspector stated that a complete review of the site is not conducted during every routine inspection of subdivisions.

# Observation 10. The inspectors of the city of Chesapeake are not completing the documentation required by the city's SOP "Erosion and Sediment Control Minimum Standards, Inspection and Enforcement".

The City Inspectors were not completing the documentation required by the city's SOP "Erosion and Sediment Control Minimum Standards, Inspection and Enforcement". SOP sections "Duties, Stormwater Management" (Item A.6, Page 2) and "Duties, Subdivisions" (Item A.4, Page 5) state that Part I of the MS-19 Form must be completed during routine inspections, at least once every two (2) weeks and within 48 hours of runoff producing storm events. The inspectors in both departments stated that they do not complete Part I of the required MS-19 form during every routine bi-weekly and post-rain event inspection.

The Department of Development and Permits is responsible for routine E&S inspections of subdivisions including the recorded lots, until the utility improvements have been satisfactorily inspected for activation. Stormwater Management is responsible for routine E&S inspections of individual building lots within the subdivisions where the utility improvements have been activated for water and sewer connections to individual lots.

The Department of Development and Permits Inspectors stated that an original inspection report is completed only if noncompliance is noted. If noncompliance is not identified, notes are entered into a hand written log and Part I of the MS-19 form is not completed. As a result, there is no documentation that the inspector completed a review of the 19 minimum standards. The inspectors further indicated that if noncompliance is not corrected a new form is not generated, including Part I, and that the same inspection report is sent (typically via fax) to the Responsible Land Owner on a biweekly basis until

deficiencies are fixed. It should be noted that E&S is not these inspectors' primary purpose on site. The Department of Development and Permits Inspector is primarily responsible for inspecting subdivisions for drainage, roadways, and utilities or "Pump station to finished floor."

During a site visit, the EPA inspection team reviewed an MS-19 form that documented E&S issues at Culpepper Landing that were identified during a routine inspection conducted on April 6, 2010. The inspector indicated that the form was sent to the developer of the subdivision on the same day as the inspection. The inspector further indicated that because all of the issues had not been corrected in a timely manner the same report was sent via facsimile to the responsible authority again on June 2, 2010 and June 16, 2010. The EPA inspection team requested a copy of the Department of Development and Permits hand written log for the period of January 2010 through June 2010, and all MS-19 forms completed for that same time frame for the Culpepper Landing Subdivision. The city did not provide the requested information to the EPA inspection team.

Similar to the procedures of the Department of Development and Permits Inspectors, the Stormwater Management E&S Inspectors indicated that if noncompliance is not identified during routine inspections, an entry is made into their "Stormwater Technical Services Daily Activity Log" and that Part I of the MS-19 form is not completed. As a result, there is no documentation that the inspector completed a review of all minimum standards. The Stormwater Management E&S Inspector stated that the inspection form is only completed if noncompliance is noted, in which case Parts I and II of the form are completed along with photo documentation.

The EPA inspection team requested a copy of the "Stormwater Technical Services Daily Activity Log" log for the period of January 2010 through June 2010 (Exhibit 11, E&S Daily Activity Logs) and MS-19 (Exhibit 12, Culpepper Landing Inspection Sheets) forms completed for that same time frame for Culpepper Landing. The city provided the requested information to the EPA inspection team several months after the inspection. Upon review of the documentation, it was noted that an MS-19 form was not completed for all of the inspections documented on the "Stormwater Technical Services Daily Activity Log," verifying the statements made by Stormwater Management E&S Inspectors.

The table below provides examples of inspections conducted by Stormwater Management at Culpepper Landing that were documented on Stormwater Management's "Stormwater Technical Services Daily Activity Log" in which corresponding MS-19 forms were not provided to the EPA inspection team.

The inspection dates listed in the table below indicate that an inspection had occurred based upon the "Stormwater Technical Services Daily Activity Log". The date of the inspection is denoted in bold if the required MS-19 form was completed for an inspection on that date. Each of the eleven lots listed in the table is missing the required documentation as required by the city's SOP.

**Table 1. Stormwater Management Inspections at Culpepper Landing** 

Lot No.	Address	BLDG Permit No.	Inspection Date 1 (Log)	Inspection Date 2 (Log)	Inspection Date 3 (Log)	Inspection Date 4 (Log)
4	3204 Conservancy	B1002203	6/9/2010	5/27/2010	5/11/2010	5/7/2010
5	3208 Conservancy	B1001426	6/18/2010	6/16/2010	6/9/2010	5/27/2010
6	3212 Conservancy	B1001537	6/18/2010	6/16/2010	6/9/2010	5/27/2010
9	503 Robert Frost	B0906176	4/2/2010	3/18/2010	3/9/2010	2/24/2010
27	3252 Conservancy	B1002427	6/9/2010	5/27/2010	5/11/2010	5/7/2010
28	3256 Conservancy	B1002945	6/28/2010	6/18/2010	6/16/2010	6/9/2010
29	3260 Conservancy	B1000419	4/13/2010	4/2/2010	3/18/2010	3/9/2010
31	3268 Conservancy	B1000420	5/11/2010	5/7/2010	4/22/2010	4/13/2010
48	3209 Dodd	B1000243	4/13/2010	4/2/2010	3/18/2010	3/9/2010
60	3245 Conservancy	B0906678	4/13/2010	4/2/2010	3/18/2010	3/9/2010
98	3108 Mercantile	B1000291	4/13/2010	4/2/2010	3/18/2010	3/9/2010



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

### 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

JUN 2 7 2013

Mr. Richard Weeks, Acting Director Division of Stormwater Management Virginia Department of Conservation and Recreation 900 East Main Street, 8<sup>th</sup> Floor Richmond, Virginia 23219

Re: Specific Objection to Chesterfield County Phase I Municipal Separate Storm Sewer System (MS4)
Permit VA0088609

Dear Mr. Weeks:

On March 29, 2013, the U. S. Environmental Protection Agency (EPA or the Agency), received a draft of the above-referenced National Pollutant Discharge Elimination System (NPDES) permit (Chesterfield County permit). EPA has reviewed the permit pursuant to 40 C.F.R. § 123.44 and the Memorandum of Agreement (MOA) between EPA Region III and the Virginia State Water Control Board (1975) (as well as subsequent agreements).

In April 2013, EPA informed the Virginia Department of Conservation and Recreation (DCR) and the Virginia Department of Environmental Quality (DEQ) that its concerns with the draft Phase I MS4 permit for Prince William County also applied to the draft Chesterfield County permit. On April 25, 2013, EPA issued a time extension letter to increase the Agency's review time to 90 days since we had reason to believe that the comments would not be addressed within the initial 30-day review period. EPA, DCR and DEQ are currently in discussions on these issues. While EPA, DCR and DEQ have agreed in principle on the resolution of several issues, one major issue remains -- clarification of the roles of Chesterfield County (the County) and the Virginia Department of Transportation (VDOT) in meeting the permit requirements. There are also secondary issues that still need to be resolved. Since these discussions are ongoing and the 90-day review period will expire on June 27, 2013, EPA is issuing this specific objection to the issuance of the referenced permit pursuant to 40 C.F.R. §§ 123.44(b)(1) and (c)(1) and Section III.A.2 of the MOA. As further explained herein, EPA believes that the Chesterfield County permit fails to incorporate several substantive requirements for MS4 permits, as required by the federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. (CWA), and its implementing regulations.

EPA's objection to the draft permit and identification of revisions that are needed before EPA can remove the objection, see 40 C.F.R. § 123.44(b)(2)(ii), are described below:

#### 1. MS4 Permit Coverage

All discharges from MS4s located in identified large and medium MS4s jurisdictions are required to have permit coverage. See 40 C.F.R. § 122.26(a)(3)(i). The current draft permit is insufficient to authorize all discharges from the MS4 (or MS4s) serving the County, despite the requirement for coverage. The permit applies to "discharges to surface waters from the Municipal Separate Storm Sewer System (MS4) owned or operated by the Chesterfield County in Virginia" (as well as to four categories of separate or commingled discharges through the MS4). As written, however, the permit does not provide authorization for discharges of pollutants from the MS4 within Chesterfield County that are owned or operated by VDOT.

EPA believes this lack of NPDES permit coverage for VDOT in this draft permit is based on DCR and DEQ's assumption that VDOT's discharges will be covered under the state's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (small MS4 GP, or Phase II MS4 GP) (to be effective July 1, 2013). It is hard to conceive how MS4s located in the County – a Phase I jurisdiction – can receive coverage under the small MS4 GP; those systems do not meet the definition of a "small MS4" but are instead defined as "medium" or "large" MS4s. See 40 C.F.R. § 122.26(b)(4), (7), (8), (16)(ii). From a policy perspective, requiring Phase I MS4 coverage for all VDOT-owned stormwater conveyances within the County is expected to minimize confusion over conveyance ownership since the Phase I permit would cover all such conveyances in the MS4.

Given the need for permit coverage for VDOT's discharges within the County, the regulations provide several options for how those permits may be structured, including the issuance of "one system-wide permit covering all discharges from [MS4s] within a large or medium municipal storm sewer system" or by issuing "distinct permits for appropriate categories of discharges within a large or medium [MS4]." See 40 C.F.R. § 122.26(a)(3)(ii). To the extent that Virginia chooses to issue one permit for the discharges within the County, the Preamble to the EPA Phase I Rule for Stormwater Discharges supports this option: one purpose of the regulations is to resolve issues associated with MS4 dischargers not having the legal authority to implement land use controls (e.g., DOTs) or not having ownership of conveyances (e.g., localities in instances where DOTs own conveyances). See 55 Fed. Reg. 47990, 48041 (November 16, 1990).

Consequently, in order to resolve this portion of the objection for the Chesterfield County MS4 permit, as well as to avoid the need for future objections with regard to the remaining Phase I MS4 permits in Virginia, EPA has offered Virginia the following options for extending Phase I MS4 permit coverage to VDOT facilities and conveyances located within Phase I MS4 jurisdictions:

1. DCR or DEQ may issue VDOT 11 individual Phase I MS4 permits covering its activities, including the discharge of pollutants, within each traditional Phase I MS4 jurisdiction within the state;

<sup>&</sup>lt;sup>1</sup> The Permit also applies to "Non-stormwater discharges and stormwater discharges associated with industrial activity (defined at 9 VAC 25-31-10) that are authorized by a separate Virginia Pollutant Discharge Elimination System (VPDES) permit; [d]ischarges from construction activities that are regulated under the Virginia Stormwater Management Program (VSMP) (4VAC 50-60-10 et. seq.) and authorized by a separate VSMP Permit; [certain types of] non-stormwater discharges unless the State Water Control Board or the Virginia Soil and Water Conservation Board determine the discharge to be a significant source of pollutants to surface waters; and discharge of material resulting from a spill [that] is necessary to prevent loss of life, personal injury, or severe property damage. . . . "

- 2. DCR or DEQ may issue VDOT one individual Phase I MS4 permit covering its systems for all areas of the Commonwealth statewide that are located within Phase I MS4 jurisdictions. Under this option, VDOT would still need Phase II permit coverage for stormwater conveyances that meet the definition of "small MS4" under 40 C.F.R. § 122.26(b)(16);
- 3. DCR or DEQ may add VDOT as a co-permittee to traditional Phase I MS4 permits, *i.e.*, together with the County. Under this option, VDOT would still need Phase II permit coverage for stormwater conveyances that meet the definition of "small MS4" under 40 C.F.R. § 122.26(b)(16); or
- 4. DCR or DEQ may issue one individual state-wide MS4 permit that covers all VDOT conveyances both within and outside Phase I jurisdictions.

Regardless of which option DCR or DEQ chooses, any permit issued to VDOT must include provisions specific to its operations, including:

- Permit provisions which reflect the unique and distinct aspects of VDOT operations in contrast to the activities of traditional MS4 permittees;
- Requirements for how localities and VDOT will plan, communicate and coordinate responsibilities (including funding, retrofit, and/or rebuilding projects) when County and VDOT systems are interconnected or when runoff from the County drains into the VDOT system;
- An indication as to who is responsible (and thus liable for any violations) for reducing loads
  from areas draining to a VDOT stormwater conveyance system, given that VDOT owns and
  operates the system but the County has the authority to implement land use controls such as
  ordinances; and
- Permit provisions that are clear, equitable and enforceable, and that apply to the traditional MS4 as well as to VDOT (e.g., identify specific permit provisions that are applicable to one or more permittees or co-permittees) within the Phase I MS4.

As an aside, EPA notes that while the issue of VDOT coverage arose in EPA's review of the draft Prince William County Permit, it did not arise during our agencies' discussions on the Arlington County Permit. This is because Arlington County owns and operates the majority of roads within its borders. In contrast, VDOT owns and maintains the majority of roads in Chesterfield and Prince William Counties.

If DCR or DEQ prefers to resolve the objection to the Chesterfield County MS4 permit without resolving the other Phase I VDOT coverage issues for all VDOT systems within Phase I localities, EPA would also accept issuance of a separate individual permit for VDOT activities within the Chesterfield County MS4 (Option 1 above) or issuance of a permit with VDOT as a co-permittee along with Chesterfield County (Option 3).

### 2. <u>Limitations on Stormwater Management Planning Provisions</u>

The draft permit for Chesterfield County is also problematic in that it does not include sufficient requirements for the County to perform planning. Part I.B.1 of the draft permit limits stormwater management planning activities to the evaluation of projects "within County easements, right-of-ways, and properties for implementation during the term of this permit." However, federal regulations call for, "a comprehensive planning process... to reduce the discharge of pollutants to the maximum extent

practicable" and do not limit projects to within County easements and right-of-ways. See 40 C.F.R. §122.26(d)(2)(iv).

In order to resolve this portion of the objection, DCR or DEQ must revise Part I.B.1 as follows, "No later than 12-months after the effective date of this permit, the permittee shall submit to the Department, a Storm Water Capital Improvement Plan including cost-benefit analyses for projects within the County that must be implemented within County easements, right-of-ways, and properties during the term of this permit."

### 3. Compliance with the Maximum Extent Practicable Standard

Municipal permittees are required to reduce the discharge of pollutants from their systems to the "maximum extent practicable" (MEP). See 33 U.S.C. § 1342(p)(B)(iii) ("Permits for discharges from municipal storm sewers... shall require controls to reduce the discharge of pollutants to the maximum extent practicable..."); see also 40 C.F.R. §122.34(a) ("Your NPDES MS4 permit will require at a minimum that you develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act.") Permitting authorities have the obligation to write permits with clear, enforceable and measurable provisions, and it is the responsibility of the permitting authority to develop appropriate requirements, including the determination of what requirements are necessary to achieve MEP. EPA hereby objects to Part 1.B.2(c) of the draft Chesterfield County MS4 permit because it fails to require the discharger to achieve the MEP standard for retrofit projects. Further, the fact sheet supporting the permit fails to evaluate whether the specific retrofit projects would be adequate and appropriate to satisfy the MEP standard.

In order to withdraw this portion of the objection, DCR must revise Part 1.B.2.(c) as follows:

"From the Storm Water Capital Improvement Plan required in Part I.B.1, the permittee shall select no less than fiveseven projects for completion no later than 60 months after the effective date of this permit. The permittee shall submit a summary of the projects selected for implementation and proposed schedule and project status updates to the Department as part of the annual report. for the review and approval of the Department to ensure that the projects will reduce pollutants to the maximum extent practicable (MEP). The Department may request additional projects if the seven selected projects do not meet the MEP standard.

"The permittee shall submit a status of the selected projects and updated schedule for implementation to the Department with each annual report. The permittee may substitute alternative retrofit projects if opportunity exists provided that similar screening is applied to the substituted project as that in the watershed retrofit plans and that the alternative projects are also reviewed and approved by the Department.

"The permittee shall track the number of retrofit projects, type of land use being retrofitted, total acreage retrofitted and retrofit type by the watershed identified in the retrofit study and location by latitude and longitude in hours, minutes and seconds so that it is possible to calculate the pollutant reductions associated with the project."

Similarly, the fact sheet must be revised to state:

"Part I.B.2.c) Retrofitting on Prior Developed Lands - 4VAC50-60-380 C.2.d(1)(d): As required in Part I.B.1 of the permit, the permittee must identify and prioritize Storm Water Capital Improvement projects related to pollutant reduction in order to work toward reducing pollutants to the maximum extent practicable (MEP). Based on the prioritized list, the permittee willshall select fiveseven of these projects for implementation prior to expiration of the permit. The Department will review, provide comments, and approve the proposed projects for implementation to ensure that the projects will reduce pollutants to the MEP. The Department may request additional projects if the seven selected projects do not meet the MEP standard. After approval, the permittee will proceed with implementation of the projects such that they are completed prior to the expiration of the permit. In determining MEP, the Department will consider land use of area draining to proposed BMPs; pervious and impervious acreage; downstream receiving water and channel conditions; holistic benefits of retrofits, watershed improvement plans, and/or engineered structures; the estimated pollutant reductions; and cost of pollutant reductions. With each annual report, the permittee will provide a status update of those selected projects. The permit allows the permittee to substitute alternative projects if opportunity exists provided that similar screening is applied to the substituted project as that in the watershed retrofit plans and that the alternative projects are also reviewed and approved by the Department. After approval, the permittee willshall proceed with implementation of the projects such that they are completed prior to the expiration of the permit. With each annual report, the permittee willshall provide a status update of those selected projects. For each project, the permittee willshall track the number of retrofit projects, type of land use being retrofitted, total acreage retrofitted and retrofit type by the watershed identified in the retrofit study and location so that it is possible to calculate the pollutant reductions associated with the project."

EPA recommends that DCR make the retrofit provisions within the draft Chesterfield County permit comparable to the draft Phase I MS4 permit for Arlington County submitted to EPA on January 22, 2013. EPA is pleased that DCR has expressed a willingness to make the changes, and we look forward to reviewing a revised draft permit and fact sheet with these changes prior to withdrawing our objection.

#### 4. Proper Maintenance

All NPDES permittees, including MS4 operators, are required to properly operate and maintain all facilities and systems of treatment and control at all times. See 40 C.F.R. § 122.41(e). EPA objects to the draft permit because, as written, it lacks provisions to ensure proper maintenance of stormwater management facilities.

In order to resolve this portion of the objection, DCR or DEQ must make the following changes. First, Virginia must revise Part I.B.2(b)(5) of the draft permit to read, "The permittee shall continue to require adequate long-term operation and <u>annual maintenance</u> of stormwater management facilities by the responsible party." This revision would make the maintenance provisions within the draft Chesterfield County permit comparable to the draft Phase I MS4 permits for Arlington and Prince William Counties.

Second, DCR or DEQ must further revise Part I.B.2.b)(5) of the draft permit to read, "If recorded maintenance instruments are not required for these facilities, the permittee shall develop a written strategy to address their long-term operation and maintenance no later than 12-months after the effective date of this permit. Such a strategy may shall include periodic inspections, homeowner outreach and education, maintenance agreements or other methods targeted at promoting the long term maintenance of such facilities." EPA is pleased that DCR has expressed a willingness to make the changes, and we look forward to reviewing a revised draft permit and fact sheet with these changes prior to withdrawing our objection.

Third, Part I.B.2.i)1) must be revised to read, "For stormwater management (SWM) facilities and easements maintained by the permittee and residential properties where SWM, BMP and Storm Drainage Systems qualify for County maintenance (excluding apartments and mobile home parks), the following conditions apply..." This revision would make the maintenance provisions within the draft Chesterfield County MS4 permit comparable in scope to the draft Phase I MS4 permits for Arlington and Prince William Counties.

Fourth, in order to specify maintenance provisions for stormwater management facilities that are not maintained by the permittee, Part I.B.2.i)2)(a)(1) needs to be revised to include the following language, "Beginning with the effective date of this permit, maintenance agreements may be used but are not required for stormwater control measures that are designed to treat stormwater runoff solely from the individual residential lot on which they are located provided that the permittee has developed and implemented a strategy to address maintenance of such stormwater management controls. Should the permittee choose a strategy other than a maintenance agreement, such a strategy shall be provided in writing no later than 12 months after the effective date of this permit and shall include periodic inspections, homeowner outreach and education, or other methods targeted at promoting the long term maintenance of such facilities." This revision would make the maintenance provisions within the draft Chesterfield County permit comparable to the draft Phase I MS4 permits for Arlington and Prince William Counties. Alternatively, the fact sheet could explain what other permit provisions apply to facilities not operated by the permittee and for which no maintenance agreements exist.

Finally, Part I.B.2.i) must be revised to include the following specific reporting requirements, "Each annual report shall include a list of activities including inspections performed and notifications of needed maintenance and repair of stormwater infrastructure not operated by the permittee." This revision would also make the maintenance provisions within the draft Chesterfield County permit comparable to the draft Phase I MS4 permits for Arlington and Prince William Counties.

#### 5. Minimizing Discharges from Roadways

Phase I MS4 permits must include a comprehensive plan to develop, implement and enforce controls to reduce discharges of pollutants to MS4s from areas of new development and significant redevelopment. See 40 C.F.R §122.26(d)(2)(iv)(A)(2). Further, Phase I MS4 permits must contain a description of practices for reducing the impact of MS4 discharges from public streets, roads and highways. See 40 C.F.R §122.26(d)(2)(iv)(A)(3). The draft permit does not include adequate provisions to address discharges from new roadways, which are a category of new development. In order to resolve this portion of the objection, Part I.B.2.d) must be revised to include, "Prior to approval of any

secondary road design, the permittee shall require that approved source controls have been installed to minimize discharge of pollutants from the roadways and that applicable long term maintenance agreements have been implemented." This addition would make the roadways provisions within the draft Chesterfield County permit comparable to the draft Phase I MS4 permits for Arlington and Prince William Counties.

#### 6. Outreach to Golf Courses

Phase I MS4 permits must include a description of programs to reduce pollutants in discharges from MS4s associated with fertilizers and pesticides. These programs will include educational activities, as appropriate. See 40 C.F.R §122.26(d)(2)(iv)(A)(6). The draft permit does not include adequate provisions to address fertilizer and pesticide runoff from public and private golf courses. In order to resolve this portion of the objection, Part I.B.2.k)(c) must be revised as follows: "Evaluate the development of Develop an outreach program with public and private courses golf courses located within the county that would implement integrated management practice (IMP) plans and techniques to reduce runoff of fertilizer and pesticides." This revision would make the education provisions within the draft Chesterfield County permit comparable to the draft Phase I MS4 permits for Arlington and Prince William Counties.

#### 7. Clarification of Director and Authorized Representative

Federal regulations governing the NPDES programs specify that the Director means the the State Director of an approved program or an authorized representative. See 40 C.F.R §122.2. Given that the NPDES program governing MS4 discharges is transitioning from DCR to DEQ, the permit must be updated to reflect the appropriate Department and Board in order to resolve this portion of the objection.

EPA looks forward to continuing to work cooperatively with DCR and DEQ to resolve the remaining issues in an expeditious manner. EPA is currently in discussions with DCR and DEQ on other possible options to address our concerns about MS4 permit coverage and VDOT, in addition to the four choices identified above. Until the issues are resolved, however, neither DCR nor DEQ may issue the Chesterfield County MS4 permit without written authorization from EPA. See 40 C.F.R. §122.4(c).

If you have any questions, please contact me, or Evelyn S. MacKnight, Chief, NPDES Permits Branch, at (215) 814-5717.

Sincerely.

Jon M. Capacasa, Director

Water Protection Division

cc: Ginny Snead, DCR
Melanie Davenport, DEQ

Scott Smedley, Chesterfield County



#### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

#### CERTIFIED MAIL RETURN RECEIPT REQUESTED

County Administration Attn: Mr. Art Warren Chairman Board of Supervisors 9901 Lori Road Chesterfield, VA 23832

a 2011

Re: Municipal Separate Storm Sewer System Inspection Report

and Administrative Order (EPA Docket No. CWA-03-2011-0150DN)

Dear Mr. Warren:

On April 21-22, 2010, the United States Environmental Protection Agency (EPA) conducted an inspection to investigate compliance with the National Pollutant Discharge Elimination System (NPDES) permit issued for operation of Chesterfield County's municipal separate storm sewer system (MS4). Enclosed is a copy of the report documenting that inspection.

Also enclosed is a copy of an Administrative Order (Order) issued this date pursuant to Section 309(a) of the Act, as amended, 33 U.S.C. § 1319(a). This Order contains findings that Chesterfield County has violated Section 301 of the Act, 33 U.S.C §§ 1311. You should carefully read the contents of the enclosed Order, and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order may result in further enforcement actions being taken, including a civil suit for penalties and injunctive relief, or a criminal prosecution as appropriate.

If you require any information or assistance regarding this matter, please contact Allison Graham, U.S. EPA Region III, NPDES Enforcement Branch, 215-814-2373 or Andrew Duchovnay, Senior Assistant Regional Counsel, 215-814-2484.

Sincerely,

Jon M. Capacasa, Director Water Protection Division

U.S. Environmental Protection Agency, Region III

Catherine a fiber for

Enclosure

O

Anne Crosier, VA DCR cc:



### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

1650 Arch Street Philadelphia, Pennsylvania 19103-2029

I hereby certify that the within is a true and correct copy of the original Finding all filed in this matter. Cole from the complex of

In the Matter of:

Chesterfield County, Virginia 9800 Government Center Parkway Chesterfield, VA 23832 Docket No. CWA-03-2011-0150DN FINDINGS OF VIOLATION AND ORDER FOR COMPLIANCE

Respondent

#### I. STATUTORY AUTHORITY

1. The following Findings of Violation and Order for Compliance (Order) is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Section 308 of the Clean Water Act (CWA or Act), 33 U.S.C. 1318 and Section 309(a) of the CWA, 33 U.S.C. Section 1319(a). The Administrator has delegated these authorities to the Regional Administrator of Region III, who in turn has delegated them to the Director of the Water Protection Division of Region III.

### II. STATUTORY AND REGULATORY BACKGROUND

- 2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.
- 3. EPA is authorized under Section 308 of the CWA, 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the purpose of the Act, including but not limited to:
  - (a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance under the Clean Water Act;

Appomattox River. Stormwater from the County drains to the Appomattox, Lower James, and Middle James-Willis watersheds which flow to "water of the United States" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.

- 13. The Virginia Department of Environmental Quality (VADEQ) issued to Respondent an NPDES MS4 Discharge Permit No. VA0088609 on March 24, 2003 (hereinafter the "MS4 Permit"). The MS4 Permit expired on March 23, 2008, and has been administratively extended to the present. (MS4 Permit Discharge Permit No. VA0088609 is attached hereto as Exhibit A.)
- 14. On April 21 and 22, 2010, a compliance inspection team comprised of authorized representatives of EPA inspected Respondent's MS4 program.

## IV. VIOLATIONS

### Count 1

- 15. Pursuant to Part I.B.1.b.(2) of the MS4 Permit, "[t]he permittee shall continue the implementation of the current storm sewer mapping and field-screening procedures for identifying unauthorized non-storm water discharges and improper disposal into the storm sewer system. Priority shall be placed on segments of the storm sewer system that receive drainage from industrial and commercial sources."
- 16. Pursuant to Part I.C.4 of the MS4 Permit, "[t]he permittee shall provide adequate finances, staff, equipment, and support capabilities to implement all parts of the Storm Water Management Program required by Part I.B of this permit."
- 17. At the time of the inspection, County staff estimated that hundreds of storm water outfalls are present in both industrial and commercial areas in the County. The County has two Dry Weather Screening Inspectors who jointly inspect between 40 and 100 major outfalls (greater than 36" in diameter) a year. County staff stated that most major outfalls have been visited at least once in the past eight years, and that inspectors attempt to visit problem areas approximately every three years. Respondent has no current plans to hire additional Dry Weather Screening Inspectors due to budget constraints.
- 18. Respondent failed to comply with Parts I.B.1.b(2) and I.C.4 of the MS4 Permit by failing to commit adequate resources to the inspections which resulted in an inability to inspect a sufficient number of outfalls in the County in violation of the Permit.

### Count 5

- 29. Pursuant to Part I.C.1 of the MS4 Permit, Chesterfield County shall ensure that "[a]ll pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable...as specified in Part I.B of this permit."
- 30. On April 21, EPA and EPA representatives inspected the Chesterfield County Fleet Maintenance Facility located at 9700 Lori Lane, Chesterfield VA. Inspectors observed an undermined silt fence with sediment accumulation beyond the silt fence in an MS4 drainage channel.
- 31. Respondent failed to comply with Part I.C.1 of the MS4 Permit by failing to reduce pollutants discharged from the MS4 to the maximum extent practicable.

### Count 6

- 32. Pursuant to Part I.C.4 of the MS4 Permit, "[t]he permittee shall provide adequate finances, staff, equipment, and support capabilities to implement all parts of the Storm Water Management Program required by Part I.B of this permit."
- 33. Chesterfield County offers a storm water training class; however, not all County personnel who may be involved in identifying storm water issues are required to attend the class. The County cannot consistently identify storm water issues to control and monitor without standardized training requirements.
- 34. Respondent failed to comply with Part I.C.4 of the MS4 Permit by failing to provide adequate staff and support capabilities to implement all parts of the SWMP required by Part I.B of the Permit.

### Count 7

- 35. Pursuant to Part I.B.1.d of the MS4 Permit, the permit requires "[a] program to continue implementation and maintenance of structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites."
- 36. The EPA inspection team observed that the County differentiates between what it considers to be a violation of local code and a deficiency. The County does not consider construction site operators to be in violation of local code until the operator has been issued a notice to comply, and the operator fails to meet the time frame for corrective action. The utilization of this procedure creates an unnecessary delay in the County's ability to reduce pollutants in storm water runoff from construction sites.
- 37. On April 22, 2010, EPA and EPA representatives conducted a site visit at Clover Hill High School located on Genito Road. Inspectors observed a storm water control, consisting of silt fence and stone, which had failed resulting in a discharge of sediment from the construction site boundary through a drainage culvert. The County inspector did not identify this as a deficiency or violation while on site, thus allowing the deficiency to exist uncorrected.

- 47. At the above-mentioned Magnolia Lakes construction site, inspectors also observed that two turbidity curtains had been installed in the receiving waterbody referred to as Sportsman Lake. Site conditions observed by the EPA indicated that additional BMPs could have been maintained in order to prevent sediment intrusion into Sportsman Lake. As a result, the County-approved Erosion and Sediment Control Plan was not in accordance with the Chesterfield County Erosion and Sediment Control Ordinance.
- 48. Respondent failed to comply with Part I.B.1.d(1) of the MS4 Permit by failing to operate in accordance with the Chesterfield County Erosion and Sediment Control Ordinance for the Magnolia Lakes construction site.

### V. CONCLUSION OF LAW

49. Respondent's failures to comply with the MS4 Permit constitute violations of the Permit and Section 301 of the CWA, 33 U.S.C §1311.

# VI. ORDER FOR COMPLIANCE

AND NOW, this 6th day of 1001, 2011, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. §1319(a) and Section 308 of the Act, 33 U.S.C. Section 1318, to do the following:

- 50. Within sixty (60) days of the effective date of this Order, Respondent shall:
  - a. Modify its storm water management program, in accordance with Part I.B.2 of the MS4 Permit, to require actions to rectify the violations identified in this Order and any additional actions needed to come into compliance with the MS4 Permit. Submit the revised Plan to:

Allison Graham, Enforcement Officer U.S. EPA, Region III, (3WP42) 1650 Arch Street Philadelphia, PA 19103-2029 (215) 814-2373

b. Provide certification, signed by a responsible corporate officer, as defined in 40 CFR § 122.22, that reads as follows: "I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Permit No. VA0088609 Effective Date: March 24, 2003 Expiration Date: March 23, 2008

# AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM

AND

# THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act as amended and pursuant to the State Water Control Law and regulations adopted pursuant thereto, the Chesterfield County is authorized to discharge from all portions of the municipal separate storm sewer system owned and operated by the permittee to surface waters of the State.

The authorized discharge shall be in accordance with this cover page, Part I – Storm Water Management Program Requirements, Part II – Conditions Applicable To All VPDES Permits, as set forth herein.

Director, Department of Environmental Quality

3 - 24 - 03 Date

Exhibit A

# STORM WATER MANAGEMENT PROGRAM REQUIREMENTS

# A. WATERSHED MANAGEMENT AND MONITORING REQUIREMENTS

- 1. The Department of Environmental Quality and the permittee may assess improvement in the quality of storm water from the municipal separate storm sewer system based on the information required by this Part, plus any additional information generated by the permittee.
- 2. The permittee shall implement the Watershed Assessment and Stream Protection (WASP) Program as detailed in Section 4 of the permit reissuance application. The WASP Program shall be conducted to develop a better understanding of storm water runoff and its effect on the quality of the County's waters, identify those sources of water quality degradation and develop strategies to minimize or eliminate the sources of water quality impairment. The program shall consist of three major components, including: 1) data collection to determine the level of stream impairment; 2) identification and assessment of sources which may be contributing to water quality degradation; and 3) development and implementation of controls or Watershed Management Strategies to preserve, protect and/or restore the quality of county waters.

### a. Monitoring Requirements

The permittee shall conduct annual in-stream monitoring during the spring on a representative number of stream sites in at least one of the County's four primary watersheds. The number and location of sites shall be determined by the permittee and shall be sufficient to fully assess water quality issues within each watershed. The four primary watersheds Swift Creek, Falling Creek, Appomattox River, and tributaries of the James River shall be assessed on a rotational basis during the term of the permit.

The permittee shall determine the level of impairment of the selected stream segments utilizing the following methods:

### (1) Chemical Assessment:

Chemical water quality analyses, using approved protocols and methods to ensure the quality of the data. The following parameters shall be analyzed according to the methods listed under 40 CFR Part 136:

Hardness	Total Phosphorus		
Total Ammonia	Total Suspended Solids		
Nitrate/Nitrite	Biochemical Oxygen Demand (BODs)		
Dissolved Phosphorus	Fecal Coliform		

The permittee may add to the above list of parameters at their discretion, any deletion of parameters from the list must be with the agreement of the Virginia Department of Environmental Quality (VDEQ).

### (2) Biological Assessment:

Benthic macroinvertebrate assessments using the U.S. Environmental Protection Agency's (EPA) Rapid Bioassessment Protocol (EPA 841-B-99-002 - as amended) or other method as approved by VDEQ.

(3) Physical Stream Assessment:

### Contents of the Program

The Storm Water Management Program shall contain the following four elements:

a. A program to utilize structural and source control measures to reduce pollutants that are discharged through the municipal separate storm sewer system in storm water runoff from commercial and residential areas, including a schedule for implementing the controls.

As part of the program outlined by the County in the Storm Water Management Program :

(1) The permittee shall continue with the existing maintenance program for structural controls owned, operated or required by the permittee.

The permittee is responsible for obtaining any required State or federal permits necessary to complete maintenance activities, including permits for land disturbance, wetlands disturbance, dredging, etc.

- (2) The permittee shall adhere to and, where applicable, enforce all those components of The Plan for Chesterfield County, the Storm Water Management Program, and all storm water related ordinances pertaining to development and redevelopment in Chesterfield County.
- (3) Public streets, roads, and highways maintained by the permittee shall be operated and maintained in a manner to minimize the discharge of pollutants, including those pollutants related to deicing or sanding activities.
- (4) The permittee shall maintain the existing programs to assure that stormwater quantity control basins are retrofitted, where feasible, to improve their water quality functions.
- (5) The permittee shall maintain its program to reduce the pollutants in discharges to the municipal separate storm sewer system associated with the application of pesticides, herbicides and fertilizers.
- (6) The permittee shall continue to administer and improve the existing public education efforts designed to educate the general public and other groups about storm water pollution prevention, including but not limited to the application of herbicides, pesticides, and fertilizer.
- b. A program and schedule to detect and remove, or to notify a discharger to apply for a separate VPDES permit for, unauthorized non-storm water discharges and/or improper disposal into the municipal separate storm sewer system.

As part of the program outlined by the County in the Storm Water Management Program:

Permit No. VA0088609 Part I Page 5 of 10

As part of the program outlined by the County in the Storm Water Management Program :

- (1) The permittee shall implement the industrial inspection procedures outlined in the Storm Water Management Program section of the VPDES Permit Reissuance Application.
- (2) The permittee shall inspect any new or previously unidentified facilities (as described above), and may establish and implement control measures as necessary for storm water discharges from these facilities.
- (3) The permittee may monitor, or require the facility to monitor, storm water discharges associated with industrial activity to the municipal separate storm sewer system from facilities described in Part I.B.1.c above. This monitoring program shall be designed by Chesterfield County.
- d. A program to continue implementation and maintenance of structural and nonstructural best management practices to reduce pollutants in storm water runoff from construction sites.

As part of the program outlined by the County in the Storm Water Management Program:

(1) The permittee shall continue to implement the requirements of the, the Erosion and Sediment Control Ordinance for land disturbing activities.

For land disturbing activities equal to or greater than one acre, the permittee shall notify the construction site owner that they must apply for Storm Water Construction General Permit with the Department of Environmental Quality. The permittee shall maintain records of all approved sites. The permittee shall submit a monthly summary of these approved plans to the Department of Environmental Quality, Piedmont Regional Office, which will include:

- (a) Owners Name
- (b) Owners Address
- (c) Site Name
- (d) Site Address

The Department of Environmental Quality will determine if the land disturbing activity has been covered under a VPDES General Permit and will notify the owner and the permittee if such a permit is required. In addition, the permittee's Erosion and Sedimentation (E&S) Program shall be fully consistent with the requirements of the Department of Conservation & Recreation (DCR). If the permittee does not have a fully consistent program, all efforts to achieve full consistency shall be documented in the annual report.

(2) The permittee shall evaluate whether or not the recently developed Certified Responsible Land Disturber program being administered by the Department of Conservation & Recreation is effective in promoting improved compliance

Permit No. VA0088609 Part 1 Page 7 of 10

by April 10, 2005, April 10, 2006, April 10, 2007, and April 10, 2008. The report shall include the following information for the period covered:

- a. The status of implementing the components of the Storm Water Management Program that are established under Parts I.B.l.a, b, c, and d of this permit. In addition to descriptions of each program element's status, the following specific information shall also be submitted:
  - (1) A chart showing BMPs required and their projected pollutant removal, the number of BMPs that received maintenance and the results of any BMP monitoring efforts on structural BMPs in accordance with Part I.B.1.a.(1) of this permit;
  - (2) The progress on any storm water quantity basin retrofits to provide additional pollutant removal.
  - (3) The progress on the County's public information program to address the following:
    - (a) The number of educational materials disseminated concerning the use and disposal of pesticides, herbicides and fertilizers by commercial applicators and by the general public and groups that received them;
    - (b) The number of educational materials disseminated to promote, publicize, and facilitate public reporting of the presence of non-storm water discharges into the municipal separate storm sewer system and, where practicable, quantification of the public response to the program, through items such as increased reporting of non-stormwater discharges, citizen surveys and similar measures;
    - (c) The number of educational materials disseminated to educate the public on proper management and disposal of used oil and toxic materials and a summary of any new program developed in accordance with Part I.B.1.b.(6) of this permit.
  - (4) The progress on the County's program to reduce pollutants from new development and significant redevelopment, including the following:
    - (a) The number of linear feet of streams or other water bodies protected through the enforcement of the Resource Protection Area criteria of the Chesapeake Bay Preservation Ordinance for new development and redevelopment projects.
    - (b) The amount of phosphorus reduced through the use of BMPs or other pollutant reduction measures.
    - (c) The percentage of exceptions to Chesapeake Bay Preservation Ordinance requirements granted.

Permit No. VA0088609 Part I Page 9 of 10

- (4) Number of acres treated;
- (5) Whether or not the BMP is inspected and maintained;
- (6) How often the BMP is maintained (quarterly, annually, etc.).
- A detailed report of all monitoring activities for the reporting year, including the following:
  - (1) Site location, date, time, weather conditions and any other general information documenting the monitoring activities;
  - (2) A detailed description of sample collection methods, if different from any approved methodologies;
  - (3) Chemical, biological, and physical monitoring results, including field data sheets, chain-of-custody, laboratory bench sheets and analytical results sheets;
  - (4) Documentation of all QA/QC procedures and results;
  - (5) An analysis and interpretation of the monitoring data and identification of the level stream impairment for the monitoring stream segments;
  - (6) A discussion of any problems encountered during the monitoring activities.
  - (7) A discussion of the watershed assessments conducted;
  - (8) A discussion Watershed Management Strategies identified and implanted; and,
  - (9) Any requests for the modification to the current monitoring program, along with a justification for the request.

### C. SPECIAL CONDITIONS

- The permittee shall ensure that all pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable through the continued development and implementation of a comprehensive Storm Water Management Program as specified in Part I.B of this permit.
- 2. The permittee shall effectively prohibit non-storm water discharges into the municipal separate storm sewer system. The permittee may allow discharges of non-storm water or storm water associated with industrial activity as defined at 9 VAC 25-31-120 through the municipal separate storm sewer system if such discharges are:
  - a. authorized by a separate VPDES permit;
  - not identified by the permittee or the Department of Environmental Quality to be significant sources of pollutants to State waters and may include the following: water line flushing, landscape irrigation, diverted stream flows, rising ground waters,

### CONDITIONS APPLICABLE TO ALL VPDES PERMITS

### A. Monitoring

- Samples and measurements taken as required by this permit shall be representative of the monitored activity.
- Monitoring shall be conducted according to procedures approved under Title 40 Code of Federal Regulations Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
- 3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

### B. Records

- 1. Records of monitoring information shall include:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The individual(s) who performed the sampling or measurements;
  - The date(s) and time(s) analyses were performed;
  - d. The individual(s) who performed the analyses;
  - e. The analytical techniques or methods used; and
  - f. The results of such analyses.
- 2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the Board.

### C. Reporting Monitoring Results

 The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to:

Piedmont Regional Office 4949-A Cox Road Glen Allen, Virginia 23060-6296

### G. Reports of Unauthorized Discharges

Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II.F, shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department within five days of discovery of the discharge. The written report shall contain:

- 1. A description of the nature and location of the discharge;
- 2. The cause of the discharge;
- 3. The date on which the discharge occurred;
- 4. The length of time that the discharge continued;
- 5. The volume of the discharge;
- 6. If the discharge is continuing, how long it is expected to continue;
- 7. If the discharge is continuing, what the expected total volume of the discharge will be; and
- 8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the Department under the immediate reporting requirements of other regulations are exempted from this requirement.

### H. Reports of Unusual or Extraordinary Discharges

If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the Department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed.

The permittee shall reduce the report to writing and shall submit it to the Department within five days of discovery of the discharge in accordance with Part II.1.2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

- 1. Unusual spillage of materials resulting directly or indirectly from processing operations;
- 2. Breakdown of processing or accessory equipment;
- 3. Failure or taking out of service some or all of the treatment works; and
- 4. Flooding or other acts of nature.

### J. Notice of Planned Changes (continued)

- (2) After proposal of standards of performance in accordance with Section 306 of the Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal;
- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or
- c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
- 2. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

### K. Signatory Requirements

- 1. Applications. All permit applications shall be signed as follows:
  - a. For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
  - b. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or
  - c. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

### M. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Board. The Board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

### N. Effect of a Permit

This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

### O. State Law

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by Section 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part II.U), and "upset" (Part II.V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

### P. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Sections 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

### Q. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

### 3. Prohibition of bypass (continued)

- (3) The permittee submitted notices as required under Part II.U.2.
- b. The Board may approve an anticipated bypass, after considering its adverse effects, if the Board determines that it will meet the three conditions listed above in Part II.U.3.a.

### V. Upset

- An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part II.V.2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.
- 2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
  - b. The permitted facility was at the time being properly operated;
  - c. The permittee submitted notice of the upset as required in Part II.I; and
  - d. The permittee complied with any remedial measures required under Part II.S.
- 3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

### W. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

- 1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- 3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as
  otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or
  parameters at any location.



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

### 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

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In the Matter of:	*			F.	*
Chesterfield County, Virginia 9800 Government Center Parkway Chesterfield, VA 23832		, %	Docket No. CWA-03-2011-0150DN		
		:	e-		2 200
Respondent		,: E			
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### **CERTIFICATE OF SERVICE**

I certify that on this date I filed the Original and one copy of this Findings of Violation and Order for Compliance with the Regional Hearing Clerk and directed that copies be mailed to the following persons by First Class Mail, Return Receipt Requested:

Mr. Art Warren Chairman Board of Supervisors 9901 Lori Road Chesterfield, VA 23832

Date: 4(6(1)

Andrew Duchovnay Sr. Asst. Regional Counsel



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III 1650 Arch Street

# Philadelphia, Pennsylvania 19103-2029

# CERTIFIED MAIL RETURN RECEIPT REQUESTED

County Administration Attn: Mr. Art Warren Chairman Board of Supervisors 9901 Lori Road Chesterfield, VA 23832-0040

APR 6 2011

Re: Notice of Proposed Assessment of a Civil Penalty

Docket No. CWA-03-2011-0151

Dear Mr. Warren:

Enclosed is a document entitled Administrative Penalty Complaint, and Notice of Opportunity to Request a Hearing (the "Complaint"), filed by the United States Environmental Protection Agency (EPA) against Chesterfield County under the authority of Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g).

EPA alleges that Chesterfield County has violated the Act and its implementing regulations, and the terms of its Virginia Pollutant Discharge Elimination System ("VPDES") permit, VA0088609, issued by the Virginia Department Environmental Quality and administered by the Virginia Department of Conservation and Recreation under authority of the Act. The alleged violations are specifically set out in Section III of the Complaint.

Unless Chesterfield County elects to resolve the proceeding as set forth in Section VI of the Complaint, an Answer addressing each allegation in the Complaint must be filed within thirty (30) days, or the allegations will be deemed admitted according to the rules governing this case, Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (enclosed). Failure to respond may result in the issuance of a Default Order imposing the proposed penalty without further administrative hearings.

Chesterfield County has a right to request a hearing regarding the violations alleged in the Complaint and the proposed civil penalty. Such request should be included with the Answer to this Complaint and must also be made within thirty (30) days.

We urge Chesterfield County's prompt attention to this matter.

Sincerely,

Jon M. Capacasa, Director
Water Protection Division

U.S. Environmental Protection Agency, Region III

Enclosures

cc: Anne Crosier, VA DCR

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

1650 Arch Street

I hereby certify that the

Philadelphia, Pennsylvania 19103-2029 in 18 a true and correct copy

o: the original Administrate lon

filed in this matter.

In the Matter of:

Proceeding to Assess Classifier for

Administrative Penalty Under

Chesterfield County, Virginia 9800 Government Center Parkway Section 309(g) of the Clean Water Act

Chesterfield, VA 23832

Docket No. CWA-03-2011-0151

Respondent.

ADMINISTRATIVE PENALTY COMPLAINT

AND NOTICE OF OPPORTUNITY TO

REQUEST HEARING

### I. STATUTORY AUTHORITY

- Pursuant to Section 309(g) of the Clean Water Act (CWA or Act), 33 U.S.C. 1. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Administrator of EPA has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated this authority to the Water Protection Division Director (Complainant).
- This action is governed by the "Consolidated Rules of Practice Governing the 2. Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; Final Rule," 40 C.F.R. Part 22 (hereinafter, Consolidated Rules), a copy of which is enclosed.

# II. FACTUAL AND LEGAL ALLEGATIONS

- Chesterfield County, Virginia (Respondent) is a "person" within the meaning of Section 3. 502(5) of the Act, 33 U.S.C. § 1362(5).
- At all times relevant to this Complaint, Respondent has owned and/or operated a municipal 4. separate storm sewer system (MS4) as that term is defined in 40 C.F.R. § 122.26(b)(8).
- Respondent's MS4 is located within the geographic boundaries of Chesterfield County, 5. Virginia.

- 14. The Virginia Department of Environmental Quality (VADEQ) issued to Respondent an NPDES MS4 Discharge Permit No. VA0088609 on March 24, 2003 (hereinafter the "MS4 Permit"). The MS4 Permit expired on March 23, 2008, and has been administratively extended to the present.
- 15. On April 21 and 22, 2010, a compliance inspection team comprised of authorized representatives of EPA inspected Respondent's MS4 program.

### III. FINDINGS OF VIOLATION

### Count 1

- 16. Pursuant to Part I.C.2 of the MS4 Permit, "[t]he permittee shall effectively prohibit non-storm water discharges into the municipal separate storm sewer system."
- 17. Upon review of the Respondent's outfall field sheets, the EPA inspection team noted that an illicit discharge consisting of grease and oil was identified during an inspection of Outfall 760-701-01 on August 13, 2009. The County did not reinspect Outfall 760-701-01 at any time between August 13, 2009 and April 21, 2010 nor did the County take any action during this time to prohibit the discharge.
- 18. Respondent failed to comply with Part I.C.2 of the MS4 Permit by failing to effectively prohibit non-storm water discharges into the MS4.

### Count 2

- 19. Pursuant to Part I.B.1.c.(1) of the MS4 Permit, "[t]he permittee shall implement the industrial inspection procedures outlined in the Storm Water Management Program section of the VPDES Permit Reissuance Application."
- 20. Page 12 of Respondent's MS4 Permit Reissuance Storm Water Management Program (SWMP) states "using the Industrial Inspection Forms developed during the first Permit Term and the new inspection protocol, inspect the priority industries on an annual basis."
- 21. Chesterfield County developed a list of 334 facilities subject to industrial inspection in accordance with its Industrial Inspection Protocol. In 2009, nine inspections were conducted in response to citizen complaints. The County is not completing all industrial facility inspections that it has identified as necessary.
- 22. Respondent failed to comply with Parts I.B.1.(c).1 of the MS4 Permit by failing to implement the industrial inspection procedures outlined in the SWMP.

#### Docket No. CWA-03-2011-0151

- 31. On April 22, 2010, EPA and EPA representatives conducted a site visit at Clover Hill High School located on Genito Road. Inspectors observed a storm water control, consisting of silt fence and stone, which had failed resulting in a discharge of sediment from the construction site boundary through a drainage culvert. The County inspector did not identify this as a deficiency or violation while on site, thus allowing the deficiency to exist uncorrected.
- 32. Respondent failed to comply with Part I.B.1.d of the MS4 Permit, as described above, by failing to implement and maintain structural best management practices to reduce pollutants in storm water runoff from construction sites.

### Count 6

- Pursuant to Part I.C.2 of the MS4 Permit, "[t]he permittee shall effectively prohibit nonstorm water discharges into the municipal separate storm sewer system."
- On April 22, 2010, EPA and EPA representatives conducted a site visit at the abovementioned Clover Hill High School and Swift Creek Middle School Auditorium Addition. Inspectors observed non-sediment pollutants, such as construction chemicals, fertilizers, and fuels, exposed to precipitation. The Respondent's SWMP, including its inspection checklist and Program Administration Status System, does not contain program components to address non-sediment pollutant sources.
- 35. Respondent failed to comply with Part I.C.2 of the MS4 Permit by failing effectively prohibit non-storm water discharges into the municipal separate storm sewer system.

### Count 7

- 36. Pursuant to Part I.B.1.d.(1) of the MS4 Permit, "[t]he permittee shall continue to implement the requirements of the Erosion and Sediment Control Ordinance for land disturbing activities."
- 37. Section 8-7 of the Chesterfield County Erosion and Sediment Control Ordinance states "an approved [ESC] plan may be changed by the plan-approving authority when: (a) an inspection reveals that the plan is inadequate to control erosion and sedimentation to satisfy applicable laws and/or regulations; or (b) the responsible land disturber finds that because of changed circumstances or other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this chapter, are agreed to by the plan-approving authority."
- 38. On April 22, EPA and EPA representatives conducted a site visit at the Magnolia Lakes construction site. Inspectors observed a sediment basin that had not achieved final stabilization with permanent vegetation before being removed and/or filled in, in accordance with the County-approved erosion and sediment control plan. The change in the County-

- 46. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules, Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of One Hundred Thirty One Thousand dollars (\$131,000.00) for the violations alleged herein. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
- 47. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violation, Respondent's prior compliance history, ability to pay the penalty, the degree of culpability for the cited violations, and any economic benefit or savings to Respondent because of the violations. 33 U.S.C. § 1319(g)(3). In addition, to the extent that facts or circumstances unknown to Complainant or EPA at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.
- 48. EPA may issue the Final Order Assessing Administrative Penalties after a thirty (30) day comment period unless Respondent either responds to the allegations in the Complaint and requests a hearing according to the terms of Section V, below, or pays the civil penalty in accordance with Section VI herein (Quick Resolution).
- 49. If warranted, EPA may adjust the proposed civil penalty assessed in this Complaint. In so doing, the Agency will consider any number of factors in making this adjustment, including Respondent's ability to pay. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondent.
- 50. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the CWA, any other Federal or State laws, and/or with any separate Compliance Order issued under Section 309 of the Act, 33 U.S.C. § 1319, for the violations alleged herein.

# V. ANSWER TO COMPLAINT AND OPPORTUNITY TO REQUEST HEARING

- 51. Respondent must file an Answer to this Complaint; failure to file an Answer may result in entry of a Default Judgment against Respondent. Respondent's default constitutes a binding admission of all allegations made in the Complaint and waiver of Respondent's right to a Hearing under the CWA. The civil penalty proposed herein shall then become due and payable upon issuance of the Default Order.
- 52. Upon issuance of a Default Judgment, the civil penalty proposed herein shall become due and payable.

### Docket No. CWA-03-2011-0151

this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. 33 U.S.C. § 1319(g)(4)(C). EPA will grant the petition and will hold a hearing if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

- 59. Any hearing that Respondent requests will be held and conducted in accordance with the Consolidated Rules.
- 60. At such a hearing, Respondent may contest any material fact contained in the Factual and Legal Allegations listed in Section II above, the Findings listed in Section III, above, and the appropriateness of the amount of the proposed civil penalty in Section IV, above.
- Any Answer to this Complaint, and any Request for Hearing, must be filed within thirty (30) days of receiving this Complaint with the following:

Regional Hearing Clerk (3RC00) U.S. Environmental Protection Agency, Region III 1650 Arch Street Philadelphia, PA 19103-2029

62. Copies of the Answer and any Request for Hearing, along with any and all other documents filed in this action, shall also be sent to the following:

Andy Duchovnay Assistant Regional Counsel (3RC20) U.S. Environmental Protection Agency, Region III 1650 Arch Street Philadelphia, PA 19103-2029

63. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations. The Answer and any subsequent documents filed in this action should be sent to:

Regional Hearing Clerk (3RC00) U.S. Environmental Protection Agency, Region III 1650 Arch Street Philadelphia, PA 19103-2029

#### Docket No. CWA-03-2011-0151

Payment of the penalty shall be made by one of the following methods below.

Payment by Respondent shall reference Respondent's name and address, and the EPA

Docket Number of the Administrative Penalty Complaint. A copy of Respondent's check
or a copy of Respondent's electronic fund transfer shall be sent simultaneously to Lydia
Guy, Regional Hearing Clerk, and the case attorney.

Payment by check to "United States Treasury"

i. If sent via first-class mail, to:

US EPA Region III
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000

ii. If sent via UPS, Federal Express, or Overnight Mail, to:

U.S. Bank Government Lockbox 979077 US EPA Fines and Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028

b. Via wire transfer, sent to:

Federal Reserve Bank of New York

ABA: 021030004

Account Number: 68010727 SWIFT address: FRNYUS33

33 Liberty Street

New York, NY 10045

Attn: "D 68010727 Environmental Protection Agency"

c. Via ACH (Automated Clearing House) for receiving U.S. currency, sent to:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 - checking

Finance Center Contacts:

1) Jesse White: 301-887-6548

2) John Schmid: 202-874-7026

3) REX (Remittance Express) 866-234-5681



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

1650 Arch Street Philadelphia, Pennsylvania 19103-2029

	*
: :	
Docket No. C	WA-03-2011-0151DN
	Docket No. CV

# CERTIFICATE OF SERVICE

I certify that on this date I filed the Original and one copy of this Administrative Penalty complaint, and Notice of Opportunity to Request a Hearing with the Regional Hearing Clerk and directed that copies be mailed to the following persons by First Class Mail, Return Receipt Requested:

Mr. Art Warren Chairman Board of Supervisors 9901 Lori Road Chesterfield, VA 23832

Date: 4/611

Andrew Duchovnay Sr. Asst. Regional Counsel

#### RECEIVED BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 2011 DEC 28 PM 3: 27 REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2022 REGION III. PHILA. PA

In The Matter of:

Proceeding to Assess a Class II

Administrative Penalty Under

Chesterfield County 9800 Government Center Parkway Section 309(g) of the Clean Water Act

Chesterfield, VA 23832

Docket No. CWA-03-2011-0151

Respondent

CONSENT AGREEMENT AND

FINAL ORDER

# CONSENT AGREEMENT AND FINAL ORDER

## I. PROCEDURAL BACKGROUND AND STATUTORY AUTHORITY

- This Consent Agreement and Final Order ("CAFO") is entered into by the Director of the 1. Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and Chesterfield County, Virginia ("Respondent"), pursuant to Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. The parties have agreed to settlement of the alleged violations of the Clean Water Act by Respondent.
- The Complainant initiated this proceeding for assessment of a Class II Administrative 2. Penalty pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C.§ 1319(g)(2)(B), by issuing an Administrative Penalty Complaint ("Complaint") to Respondent on April 6, 2011.
- Respondent filed an Answer and made a timely request for a hearing pursuant to Section 3. 309(g)(2)(B) of the CWA, 33 U.S.C.§ 1319(g)(2)(B).

# II. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS

- Respondent neither admits nor denies the specific factual allegations contained in the 4. Complaint.
- For purposes of this CAFO proceeding, Respondent admits the jurisdictional allegations 5. of the Complaint.

### III. CONCLUSIONS OF LAW

6. As described in the Allegations in the Complaint, EPA concludes that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, and is liable to the United States for a civil penalty in accordance with Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

### IV. GENERAL PROVISIONS

- 7. For the purpose of this CAFO proceeding:
  - A. Respondent consents to the assessment of the civil penalty (the "Civil Penalty") set forth herein;
  - B. Respondent agrees to undertake all actions required by this Consent Agreement;
  - C. Respondent hereby expressly waives its right to contest the allegations set forth in the Complaint at a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C.§ 1319(g)(2)(B);
  - D. Respondent waives its right to appeal this Final Order under Section 309(g)(8)(B) of the CWA, 33 U.S.C.§ 1319(g)(8)(B).
- 8. Each party to this agreement shall pay its own costs and attorney's fees.
- 9. This CAFO does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 of the CWA, 33 U.S.C. § 1342 or any other law. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C.§§ 1251 et seq., or any regulations promulgated thereunder.
- 10. This Consent Agreement and the accompanying Final Order resolve the civil claims against the Respondent for the specific violations alleged in the Complaint issued in the above-captioned action. EPA reserves the right to commence an action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C.§ 1251 et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its effective date.
- 11. This CAFO is conditioned upon the accuracy of the Respondent's representations to EPA. EPA reserves the right to institute a new and/or separate action should Respondent fail to comply with the terms of this CAFO. That right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
- 12. This CAFO may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one

- agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.
- 13. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO or one or more of its terms and conditions is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

### V. PENALTY

- 14. For the purpose of this proceeding, the Respondent consents to the assessment of the Civil Penalty in the amount of \$77,866.00 in full and complete settlement of EPA's civil claims as set forth in the Complaint alleging violation of Section 301 of the Clean Water Act, 33 U.S.C.§ 1311.
- 15. The \$77,866.00 penalty as provided for in Paragraph 10 shall be divided as follows: (a) a cash penalty in the amount of \$46,666; and (b) \$31,200.00 (the "amount required to be spent for the SEP") by the implementation of a supplemental environmental project ("SEP").

### VI. PAYMENT TERMS

- 16. Within thirty (30) days of the effective date of this Order, Respondents shall pay the civil penalty of forty six thousand, six hundred and sixty-six dollars (\$46,666) in the following manner:
  - A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, CWA-03-2011-0151;
  - B. All checks shall be made payable to "United States Treasury";
  - C. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, MO 63197 9000

Contact: Bryson Lehman 513-487-2123

D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank Government Lockbox 979077 U.S. EPA, Fines & Penalties 1005 Convention Plaza Mail Station SL MO C2 GL St. Louis, MO 63101

Contact: 314-418-1028

E. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance US EPA, MS NWD 26 W. M.L. King Drive Cincinnati, OH 45268 0001

F. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"

G. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 Checking

Physical location of U.S. Treasury facility: 5700 Rivertech Court Riverdale, MD 20737 Contact: Jesse White 301 887 6548 or REX, 1 866 234 5681

H. On Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

I. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make\_a\_payment.htm

J. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to the following:

> U.S. Environmental Protection Agency Regional Hearing Clerk (3RC00) 1650 Arch Street Philadelphia, Pennsylvania 19103-2029;

Ms. Allison Graham U.S. Environmental Protection Agency Region III (3WP42) 1650 Arch Street Philadelphia, PA 19103-2029;

and

Andrew Duchovnay
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029

17. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C.§ 3717 and 40 C.F.R.§ 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R.§ 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R.§ 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative

costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each such subsequent thirty (30) days the penalty remains unpaid.

A penalty charge, not to exceed six percent, will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R.§ 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R.§ 901.9(d).

# VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

- 18. Respondent shall complete a SEP as described in Attachment A, which is incorporated into the CAFO by reference.
- 19. Respondent hereby certifies that there is no current requirement under any federal, state or local law or regulation for Respondent to perform or develop the SEP within the next five years; nor is Respondent required to perform or develop the SEP by any agreement, grant or injunctive relief in this or any other legal proceeding or in compliance with state or local requirements. Respondent further certifies that it has not received, or will not receive, credit for the SEP activities in any other enforcement action in any form.
- 20. Respondent agrees that EPA may request copies of any materials related to the SEP, at any time, upon reasonable advance notice to Respondent, to confirm that the SEP is being or has been performed in accordance with this CAFO. Respondent further agrees to provide requested information to EPA within fourteen (14) days of a reasonable request. The EPA reserves all existing inspection authority.
- 21. Within 60 days of completion of all SEP work, Respondent shall provide written notice (SEP Report) to EPA of SEP completion, describing all actions taken in furtherance of the SEP. Additionally, Respondent will provide EPA with sufficient documentation to confirm the completion of the SEP and the associated costs incurred and expended by Respondent in completion of the SEP.
- 22. Following receipt of the SEP Report, EPA, in its sole discretion, which it will not exercise in an arbitrary or capricious manner, may do one of the following: (a) accept the SEP Report; (b) reject the SEP Report and notify the Respondent in writing of the deficiency in the SEP Report and grant the Respondent an additional thirty (30) days from receipt of such notice to correct any deficiency; or (c) determine that the SEP has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 24 of this CAFO.
- 23. If EPA elects to exercise option (b) as described in the proceeding paragraph, it will permit the Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP report. If agreement cannot be reached within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent.
- 24. In the event that Respondent fails to comply with any terms or provision of this CAFO relating to the performance of the SEP and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP as set forth in Paragraph 15 of this

CAFO, Respondent shall be liable for additional civil penalties according to the provisions set forth below:

- (i) Except as provided in subparagraph (ii) immediately below, if the SEP has not been completed in accordance this CAFO, Respondent shall pay an additional civil penalty to the United States of \$31,200.00.
- (ii) If the SEP is not completed in accordance with the CAFO, but the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least ninety (90) percent of the amount of money which was required to be spent for that SEP was actually expended on the SEP, Respondent shall not be liable for any additional civil penalty.
- (iii) If the SEP is completed in accordance with the CAFO, but the Respondent spent less than ninety (90) percent of the amount required to be spent for that SEP, Respondent shall pay an additional civil penalty to the United States of \$7,800.00.
- (iv) If the SEP is completed in accordance with the CAFO and the Respondent spent at least ninety (90) percent of the amount of money required to be spent for the SEP, Respondent shall not be liable for any additional civil penalty.
- (v) For failure to submit the SEP Report required by Paragraph 21, above, Respondent shall pay an additional civil penalty in the amount of \$250.00 each day after the date that the report is due until the report is submitted.
- 25. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the work conducted by Respondent and the participating businesses in connection with the SEP undertaken pursuant to this CAFO.
- 26. All submissions required herein shall be signed and dated by a responsible official of Respondent to include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signed Suffmare

Title County Administrator

Date December 22,2011

# VIII. EFFECTIVE DATE

This CAFO shall become final and effective thirty (30) days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C.§ 1319(g)(5).

# IX. SIGNATURE

The undersigned representative of Respondent certifies that he or she is fully authorized to enter in to the terms and conditions of this CAFO and to legally bind the Respondent.

FOR RESPONDENT:

James J. L. Stegmaier, County Administrator Chesterfield County, Virginia 12/22/2011 Date

FOR EPA:

Jon M. Capacasa, Director Water Protection Division

Environmental Protection Agency

Region III

12/2 Data SO ORDERED, pursuant to 33 U.S.C. § 1319(g) and 40 C.F.R. Part 22,

this 2840 day of December, 2011

Shawn M. Garvin

Regional Administrator

EPA, Region III

## SUPPLEMENTAL ENVIRONMENTAL PROJECT PROPOSAL In the Matter of Chesterfield County, Virginia Docket No. CWA-03-2011-0151

### 1. Total Program Costs:

a. Spill kits (individual and total # needed)

We would order four different types of kits for distribution that would suit a variety of business needs. We would order a total of 220 kits for a cost of \$21,202.50 with estimated shipping costs of \$350 for a total of \$21,552.50.

PIG Portable Spill Response Bag for Oils, Solvents & Water \$97 - 55 kits PIG Portable Spill Response Bag for Oils \$98.50 - 55 kits PIG GoBox Spill Cabinet for Oils, Solvents, and Water \$91 - 55 kits PIG GoBox Spill Cabinet for Oils only \$99 - 55 kits

### b. Program administration

- 1 hour staff time to help each interested business develop a SWPPP using our template. 220 hours
- Coordinate purchase of kits and distribute to businesses. 220 hours
- Develop and maintain tracking system to record which businesses received spill kits, the type of spill kit received, which completed a SWPPP, and marked storm drains. 25 hours
- c. Storage
  - Store the kits in the Drainage Shop.
- d. Placards (1000) for storm drain marking @ \$3.00 each = \$3,000.00
- e. Publication for kits

Estimate: \$1000

f. Mailings (1000)

Printing: 1000 postcards: \$500.00

Postage: 1000 pieces @ \$0.27 = \$270.00

- g. Educational Material
  - Certificates for businesses that get a kit, complete a SWPPP, and mark storm drains: \$200.00

### 2. List Spill Kit Contents

- a. PIG Portable Spill Response Bag for Oils, Solvents & Water (\$97) 55 kits
  - 4 48" PIG® BLUE Absorbent Socks
  - 28 PIG® Universal Mat Pads
  - 5 Temporary Disposal Bags
  - 5 Ties
  - 1 21.75" L x 17.25" W x 7.25" D Carry Bag
- b. PIG Portable Spill Response Bag for Oils (\$98.50) 55 kits
  - 4 48" PIG® Oil-Only Socks
  - 28 PIG® Oil-Only Mat Pads
  - 5 Temporary Disposal Bags

Attachment A

- 5 Ties
- 1 21.75" L x 17.25" W x 7.25" D Carry Bag
- c. PIG GoBox Spill Cabinet for Oils, Solvents, and Water (\$91) 55 kits
  - 30 PIG® Universal Mat
  - 3 PIG® BLUE Absorbent Sock
  - 1 PIG® Pillows
  - 50 PIG® Heavy-Duty Maintenance Wipers
  - 1 Goggles
  - 1 Nitrile Gloves
  - 2 Temporary Disposal Bags
  - 5 Ties
- d. PIG GoBox Spill Cabinet for Oils (\$99) 55 kits
  - 30 PIG® Oil-Only Mats in a Bench Box® Dispenser
  - 3 PIG® Oil-Only Absorbent Socks
  - 1 PIG® SKIMMER Pillows
  - 1 Goggles
  - 1 Nitri-Solve® Nitrile Gloves
  - 2 Temporary Disposal Bags
  - 5 Ties

Supplies, outreach material: \$26,522.50

Approximately 465 staff hours @ 28.00/hr = \$13,020.00

Estimated Total: \$39,542.50

# In Re: Chesterfield County, Virginia, Docket No. CWA-03-2011-0151

### CERTIFICATE OF SERVICE

I certify that on this date I filed the original and one copy of the Consent Agreement and Final Order in connection with the above referenced case with the Regional Hearing Clerk and directed that copies be mailed to the following persons:

By Pouch mail to:

The Honorable Susan L. Biro, Chief Administrative Law Judge Office of Administrative Law Judges U.S. Environmental Protection Agency 1099 14<sup>th</sup> Street, N.W., Suite 350 Washington, DC 20005 (Courtesy copy emailed as well, on this date)

By first class mail to:

Julie Seyfarth, Esq.
Assistant County Attorney
County of Chesterfield
9901 Lori Road, Suite 300
Chesterfield, VA 23832-0040
(Courtesy copy emailed as well, on this date)

Date: 12/28 ()

Andrew Duchovnay

Sr. Asst. Regional Counsel



# CHESTERFIELD COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) INSPECTION

CHESTERFIELD
DEPARTMENT OF ENVIRONMENTAL ENGINEERING
9800 GOVERNMENT CENTER PARKWAY
CHESTERFIELD, VA 23832

#### FINAL NOVEMBER 2010

U.S. Environmental Protection Agency, Region III
Water Protection Division
Office of NPDES Enforcement (3WP42)
1650 Arch Street
Philadelphia, PA 19103

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#### **EXECUTIVE SUMMARY**

# Municipal Separate Storm Sewer System (MS4) Inspection Report Chesterfield County, Virginia

From April 21 through 22, 2010, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), EPA's contractor, Eastern Research Group, Inc. (ERG), and ERG's subcontractor, PG Environmental, LLC, inspected the municipal separate storm sewer system (MS4) program of the county of Chesterfield, Virginia. Discharges from the county's MS4 are regulated by Virginia Pollution Discharge Elimination System (VPDES) Permit Number VA0088609, effective March 24, 2003. The purpose of this inspection was to obtain information for evaluating the County's compliance with Permit VA0088609, which is included in Attachment 1. The inspection focused specifically on the following sections of the Permit in relation to the county's MS4 program: (1) Part I.B.1.a - Structural and Source Control Measures; (2) Part I.B.1.b - Unauthorized Discharges and Improper Disposal; (3) Part I.B.1.c - Runoff from Industrial and Commercial Facilities; and (4) Part I.B.1.d - Runoff from Construction Sites.

Based on the information obtained and reviewed, the EPA's compliance inspection team made several observations concerning Chesterfield County's MS4 program related to the specific permit requirements evaluated. Table 1 summarizes the permit requirements and the observations noted by the inspection team.

Table 1. Observations Identified During the Chesterfield Inspection (4/21/10 – 4/22/10)

Virginia Permit Number VA0088609 Requirement		Observations
I.B – Storm Water Management Program	Observation 1.	The county of Chesterfield did not maintain a written description of its current Storm Water Management Program.
I.B.1.a – Structural and Source Control Measures	No observation	s for this element of the permit.
I.B.1.b – Unauthorized Discharges and Improper Disposal	Observation 2.	The county of Chesterfield was not providing adequate resources to complete annual dry weather screening inspections of identified outfalls.
	Observation 3.	The county of Chesterfield was not completing and documenting follow up action taken after evidence of an illicit discharge was observed.

Table 1. Observations Identified During the Chesterfield Inspection (4/21/10 - 4/22/10)

Virginia Permit Number VA0088609 Requirement		Observations
I.B.1.c – Runoff from Industrial and Commercial Facilities	Observation 4.	The county of Chesterfield did not have an industrial inspector to complete the inspections required by I.B.1.c.(1) and I.B.1.c(2) of the permit.
	Observation 5.	The county of Chesterfield did not have a formal training program for identifying stormwater issues on industrial and commercial sites.
	Observation 6.	The county of Chesterfield was not adequately minimizing pollutant discharges from county industrial facilities.
I.B.1.d – Runoff from Construction Sites	Observation 7.	The county of Chesterfield had not developed standard procedures for consistent and progressive escalation of its available enforcement actions based on inspection observations.
	Observation 8.	The county of Chesterfield Erosion and Sediment Control (ESC) inspectors did not assess non-sediment, construction site pollutant sources.
	Observation 9.	The county of Chesterfield's plan review and approval, field inspection, and plan change processes were not in accordance with the Chesterfield County Erosion and Sediment Control Ordinance for the Magnolia Lakes construction site.

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Ches	terfield Coun	ıty
MS4	Inspection R	eport

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#### I. INTRODUCTION

From April 21 through 22, 2010, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), EPA's contractor, Eastern Research Group, Inc. (ERG), and ERG's subcontractor, PG Environmental, LLC, (hereafter, collectively, EPA inspection team) inspected the municipal separate storm sewer system (MS4) program of the county of Chesterfield, Virginia (hereafter, the county, Chesterfield, or the county of Chesterfield). Discharges from the county's MS4 are regulated by Virginia Pollution Discharge Elimination System (VPDES) Permit Number VA0088609, effective March 24, 2003 (hereafter, the permit). The purpose of this inspection was to evaluate compliance with the permit, which is included in Attachment 1. The following personnel participated in this inspection:

Department of Mr. Richard McElfish, Director

Environmental Mr. Scott Flanigan, Water Quality Manager Engineering <sup>1</sup>: Ms. Laura Barry, Water Quality Analyst

Mr. Robert Claudio, ESC Inspector for Area 5 Mr. Roger Clifton, ESC Inspector for Area 7 Mr. Weedon Cloe, Senior Water Quality Analyst

Mr. Gregory King, ESC Inspection Supervisor for Team B

Mr. Doug Pritchard, Erosion and Sediment Control (ESC) Program

Administrator

Mr. Ray Sadler, Administrative Analyst

Mr. Jeff Underwood, ESC Inspection Supervisor for Team A

EPA Representatives: Mr. Andrew Dinsmore, EPA Region 3, Stormwater Team Leader

Ms. Allison Graham, EPA Region 3

Virginia DCR Mr. Doug Fritz, MS4 Program Manager

Representative:

EPA Contractors: Mr. Mark Briggs, ERG

Ms. Kavya Kasturi, ERG

Mr. Scott Coulson, PG Environmental, LLC

The inspection focused specifically on the following sections of the Permit in relation to the county's MS4 program: (1) Part I.B.1.a - Structural and Source Control Measures; (2) Part I.B.1.b - Unauthorized Discharges and Improper Disposal; (3) Part I.B.1.c - Runoff from Industrial and Commercial Facilities; and (4) Part I.B.1.d - Runoff from Construction Sites.

Section II of this report presents background information on Chesterfield County's MS4 program. Section III presents information obtained during the inspection related to the specific permit requirements evaluated.

#### II. CHESTERFIELD BACKGROUND

The county of Chesterfield is located in central Virginia and is bordered by the James River, the Appomattox River, and the Cities of Richmond, Petersburg, Hopewell, and Colonial Heights. As of 2009, the county's population was estimated as 306,670. The county has a total area of 426 square miles.

Chesterfield's MS4 program is administered by the following departments:

<sup>&</sup>lt;sup>1</sup> A copy of sign-sheets containing the names of all county participants in the inspection is included as Attachment 2.

- Department of Environmental Engineering;
- Department of Fire and EMS;
- Department of Public Utilities;
- Department of Parks and Recreation;
- Department of General Services; and
- Department of Planning.

### III. INFORMATION OBTAINED DURING THE INSPECTION REGARDING PERMIT REQUIREMENTS

The EPA inspection team obtained information to evaluate the county of Chesterfield's compliance with the requirements of the permit, under which the county's MS4 system is covered. The permit, included in Attachment 1, has an effective date of 24 March 2003 and an expiration date of 23 March 2008. The EPA inspection team evaluated four permit components; observations regarding the county's implementation of each permit component are presented in the following four subsections. Attachment 3, the Exhibit Log, contains all referenced exhibits, and Attachment 4, the Photograph Log, contains all referenced photographs (additional photographs are available in the inspection record).

#### III.A. Requirement I.B – Storm Water Management Program

Part I.B of the permit contains requirements for the county to implement and refine a Storm Water Management Program including pollution prevention measures, management or removal techniques, use of legal authority, and other appropriate means to control the quality and quantity of stormwater discharged from the MS4. The staff responsible for the county's Storm Water Management Program include representatives from numerous organizational divisions. Exhibit 1 provides a list of the county's individual program components and the corresponding personnel tasked with their implementation. The EPA inspection team's observations related to this section of the permit are discussed below.

### Observation 1. The county of Chesterfield did not maintain a written description of its current Storm Water Management Program.

Part I.B of the permit states that Chesterfield County must "continue implementation, and, where appropriate, refinement of the Storm Water Management Program....The permittee shall implement the provisions of the Storm Water Management Program required under this Part [I.B] as a condition of the permit. All applicable components of the Municipal Separate Storm Sewer System Phase I VPDES Permit Application submitted in accordance with 40 CFR 122.26, and all approved modifications are hereby incorporated by reference into the Storm Water Management Program."

Special Condition C.1 of the permit further requires the county to "ensure that all pollutants discharged from the municipal separate storm sewer system shall be reduced to the *maximum extent practicable* [MEP]through the continued development and implementation of a comprehensive Storm Water Management Program as specified in Part I.B of this permit [emphasis added]." EPA's most recent guidance on the MEP standard is found in the preamble to the final Phase II Storm Water Regulations which states "EPA envisions application of the MEP standard as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards" (64 Federal Register 68754).

The EPA inspection team formally requested "current Storm Water Management Program document—written description of your current MS4 Programs/Program Areas (e.g., MS4 Program Plan)" (Item 1 in Exhibit 2, Team 2 Records Request). However, Chesterfield County produced program description documents that were not reflective of the current Storm Water Management Program. Specifically, the documents were part of Chesterfield County's VPDES Permit Reissuance submittal (Exhibit 3, Permit

Reissuance Description). It should be noted that the *Chesterfield County Annual Stormwater Management and Monitoring Report 2009*, *VPDES Permit No. VA0088609* (hereafter County Annual Report 2009), includes updates or routine changes associated with the day-to-day operations of the specific components of the Storm Water Management Program. However, Chesterfield County does not maintain a written description of its current MS4 Program. Furthermore, Chesterfield County does not maintain a centralized planning document that describes how the MEP standard will be achieved, or that collects and references the tools (e.g., procedural manuals, database inventories, inspection forms) that are critical to program execution.

EPA recently conducted MS4 inspections of three other Virginia permittees. The EPA inspection team noted that all of these communities had developed MS4 Program Plan documents, likely in response to previous MS4 audits conducted in 2005 by Science Applications International Corporation, as an authorized representative of EPA (hereafter, 2005 MS4 audits). Chesterfield County had not previously undergone an EPA compliance inspection of its MS4 Program, and had not developed a MS4 Program Plan document.

#### III.B. Requirement I.B.1.a – Structural and Source Control Measures

Part I.B.1.a of the permit contains requirements for the county to utilize structural and source control measures to reduce pollutants in stormwater runoff from commercial and residential areas, which the county addresses through a program herein referred to as its Structural and Source Control Measures Program. Within this program area, the inspection was focused on Parts I.B.1.a(1), (2), and (4) of the permit. State laws such as the Virginian Stormwater Management Law (§ 10-603 et seq. of the Virginia Code), the Virginia Stormwater Management Regulations (4VAC3-20 et seq.), and the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq. of the Virginia Code) provide the underlying regulatory framework for the county's Structural and Source Control Measures Program. The county has promulgated the following ordinances pertaining to development and redevelopment: 1) the Chesterfield County Chesapeake Bay Preservation Ordinance (County Code Chapter 19, Article IV, Division 4, Chesapeake Bay Preservation Areas), 2) Chesterfield County Upper Swift Creek Watershed Ordinance (County Code Chapter 19, Article IV, Division 5, Upper Swift Creek Watershed), 3) Chesterfield County Floodplain Management Ordinance (County Code Chapter 19, Article III, Division 3, Floodplain Districts and Dam Break Inundation Zones), and 4) Chesterfield County Erosion and Sediment Control Ordinance (County Code Chapter 8, Erosion and Sediment Control).

The county has also developed a Stormwater Management Best Management Practice (SWM-BMP) manual for the designated Chesapeake Bay Preservation Area, or tidewater area draining to the bay. As indicated in the manual and explained by the County Department of Environmental Engineering Director, the entire county is a Chesapeake Bay Preservation Area. The manual covers topics such as plan submission, design criteria for SWM-BMPs, and water quality compliance calculations for meeting Chesterfield County Chesapeake Bay Preservation Ordinance requirements.

The primary staff responsible for the county's Structural and Source Control Measures Program include representatives of two operational teams within the County Department of Environmental Engineering: the Plans Review Team and Drainage Maintenance Operations Team. The Plans Review Team consists of two Principal Engineers and five Senior Engineers who review development plans for commercial sites and subdivisions for compliance with requirements pertaining to SWM-BMPs, drainage, floodplains, erosion and sediment control, and the county's Chesapeake Bay Preservation and Upper Swift Creek Watershed ordinances.

The county has instituted two SWM-BMP inspection and maintenance schedules that are in effect within Chesterfield County. Commercially-owned SWM-BMPs located outside the Upper Swift Creek watershed are inspected by the owner during the first year after certification and every three years

thereafter. The county utilizes maintenance agreements and/or easements in which the owner is responsible for both inspection and maintenance. Schedules are tracked through a database that determines when necessary maintenance must take place. The county's database also generates letters notifying owners of the need to perform an inspection.

In the Upper Swift Creek watershed, a source water protection area, the Drainage Maintenance Operations Team is responsible for both inspection and maintenance of SWM-BMPs located within residential subdivisions and commercially-owned properties. Inspection and maintenance is conducted using a six-month schedule.

The County Department of Environmental Engineering Administrative Analyst indicated that approximately 460 SWM-BMPs have been implemented in the county. The County Annual Report 2009 explains that a total of 188 SWM-BMPs received routine maintenance by county staff in 2009. Commercial, institutional, and governmental property owners maintained another 276 structures. Additionally, 372 SWM-BMPs were visually inspected by county staff during rain events in 2009 to monitor performance and function of the structures (e.g., risers draining, inflow and outflow conveyances clear).

On the basis of an office discussion and limited records review, no inconsistencies between the county's Structural and Source Control Measures Program and the permit were identified. Chesterfield County appeared to have the components in place which are indicative of a developed and structured program.

#### III.C. Requirement I.B.1.b – Unauthorized Discharges and Improper Disposal

Part I.B.1.b of the permit contains requirements for unauthorized non-stormwater discharges and improper disposal, which the county addresses through its illicit discharge detection and elimination program, detailed in its *Guidance Document for Field Screening and Detailed Investigation of the Storm Sewer System*, Revised May 21, 2002. The county is currently in the process of updating this document to reflect changes made to its procedures based on Center for Watershed Protection manuals. The Chesterfield County Illicit Discharge Ordinance (County Code Chapter 12, Article V, *Discharges to the Stormwater Sewer System*), prohibits illicit discharges to the MS4. Within this program area, the inspection was focused on dry weather screening inspections and follow up and enforcement.

County staff estimated that hundreds of stormwater outfalls are present in the county. The county has two Dry Weather Screening Inspectors who inspect between 40 and 100 major outfalls (greater than 36") a year. One inspector indicated the county had a set a goal of 80 outfall inspections per year in its application for its next VPDES MS4 permit. Inspections are typically conducted between May and October. County staff indicated that most major outfalls have been visited at least once in the past eight years.

The county prioritizes dry weather screening inspections in heavy commercial areas, areas near lakes which may have retrofit potential, and areas which have not previously been inspected. Inspectors attempt to visit problem areas approximately every three years. County staff have conducted inspections on the Midlothian Turnpike and Hull Street corridor in recent years and plan to inspect outfalls along Route 1 in 2010.

After identifying the area to inspect, the County Dry Weather Screening Inspectors take the county storm sewer maps of the region, as well as a HydroLab (an immersible probe that provides instantaneous readings of dissolved oxygen, pH, conductivity, total dissolved solids, temperature and depth), manhole puller, and blank "Outfall Reconnaissance Inventory/Sample Collection Field Sheets" (outfall field sheet) to the inspection site. An example of a completed outfall field sheet is provided as Exhibit 4, Outfall 760-701-01 Field Sheet. An outfall field sheet is completed for each outfall inspected. If the County Dry Weather Screening Inspectors identify outfalls not currently represented on the storm sewer map, one of

the inspectors will draw and label the outfalls on the map. County staff indicated that the outfalls would later be added to the county's GIS database.

The county sends two inspectors to complete each outfall inspection. During the inspection, the inspectors work together to complete the basic outfall information portion of the inspection form, survey the outfall's condition, and take photos. The inspectors also note whether the outfall has the potential for a SWM-BMP retrofit. If enough water is present, the inspectors submerge the HydroLab to measure dissolved oxygen, pH, conductivity, total dissolved solids, temperature and depth. The inspectors also collect a sample to test in the county's onsite laboratory.

If problems are noted during the inspection, the inspectors record them on the inspection report and may take follow up actions. If illicit discharges are suspected, the inspectors track the source upstream and attempt to remedy the problem at the time of inspection. If infrastructure or clogging problems are noted, the inspectors send an email to the County Drainage Superintendent for resolution. The Drainage Superintendent does not notify the inspectors after the problem has been resolved. Outfalls where problems are present are tagged as "unhealthy" in the county's tracking database. The inspectors indicated that the "unhealthy" tag alerts the inspectors that a reinspection is necessary. After identifying that a revisit is necessary, the inspectors use the paper maps and paper inspection reports to determine whether revisit has been completed and to note observations during reinspections. The county is currently streamlining this process by transferring the records into the county's GIS database.

### Observation 2. The county of Chesterfield was not providing adequate resources to complete annual dry weather screening inspections of identified outfalls.

Part I.C.4 of the permit requires that Chesterfield County "provide adequate finances, staff, equipment and support capabilities to implement all parts of the Storm Water Management Program required by Part I.B of this permit." Currently, MS4 staff have identified outfalls in both industrial and commercial areas, but due to a lack of staff, these outfalls are screened during dry weather every 2 to 3 years. Based on observations made by the EPA Inspection Team and discussions with Chesterfield County MS4 staff, Chesterfield County needs two additional trained field technicians to perform outfall screening in industrial and commercial areas as required by Part I.B.1.b(2) of the permit. However, Chesterfield County has no current plans to hire these technicians due to budget constraints.

Additionally, because of the current burden placed on MS4 staff, incorporating and updating outfall locations and storm sewers in the county's GIS database is not complete. The county is in the process of transferring paper maps into a universal GIS database that can be used by all Chesterfield County departments involved with the MS4. However, the mapping project is currently a side project of the water quality analyst who is also responsible for outfall inspections, development and revision of standard operating procedures, records management, statistics, stream assessments, and minor pollution complaint response. Discussions with the water quality analyst indicated one additional staff member is needed for timely completion of this task; that staff member would be devoted to updating GIS maps with outfall information including location, outfall descriptions, maintenance requests, and outfall inspection data. However, Chesterfield County has no current plans to hire this staff member.

### Observation 3. The county of Chesterfield was not completing and documenting follow up action taken after evidence of an illicit discharge was observed.

An outfall field sheet for outfall 760-701-01 completed on August 13, 2009 indicated that rancid grease was present in the outfall and investigation was necessary to determine the source (Exhibit 4, Outfall 760-701-01 Field Sheet). The EPA inspection team formally requested documentation of follow up activity at this outfall (Exhibit 5, Team 1 Email Request). One of the dry weather screening inspectors present during the inspection stated that a restaurant was located upstream of the outfall and described the actions

taken immediately after the issue was identified (Exhibit 6, Outfall 760-706-01 Follow Up). The County Dry Weather Screening Inspectors spoke to the manager of the restaurant after inspecting the outfall and determined that the restaurant had cleaned its dumpster and dumpster pad a few weeks prior. One of the inspectors informed the manager that wash water should not enter the storm drain and provided the restaurant with his contact information and a copy of the industry guide to illicit discharge. The inspector stated that no documentation of the immediate follow up action was available and that no reinspections had occurred (Exhibit 6, Outfall 760-706-01 Follow Up). Without reinspection and documentation of follow up actions, the county cannot confirm that the outfall has been cleaned and that illicit discharges have ceased as required by Part I.B.1.b(3) of the permit.

Additionally, Part I.B of the permit requires the permittee to "reduce the discharge of pollutants from the municipal separate storm sewer system to the maximum extent practicable." However, the county does not consistently verify that maintenance needs for MS4 outfalls, identified through the outfall inspections, are addressed. County staff indicated that maintenance needs including debris and structural damage are emailed to the County Drainage Superintendent; however, the superintendent does not notify the water quality staff who are responsible for tracking the outfall conditions, after the maintenance issue has been addressed. Also, the inspectors do not notify the County Drainage Superintendent to clean outfalls after potential illicit discharges are identified, as in the case of outfall 760-706-01 described previously. This prevents the county from ensuring that pollutant discharges are reduced to the maximum extent practicable.

#### III.D. Requirement I.B.1.c – Runoff from Industrial and Commercial Facilities

Part I.B.1.c of the Permit contains requirements to monitor and control pollutants in stormwater discharges from certain industrial and commercial facilities. Within this program area, the inspection was focused on industrial and commercial facility identification and prioritization, inspections, and county industrial facility stormwater management.

#### III.D.1. Identification and Prioritization of Industrial and Commercial Facility Inspections

The county has developed the framework for an industrial inspection program. Included in the Chesterfield County industrial inspection program is the "Industrial Facility Inspection Protocol" which identifies the categories of facilities to be inspected, a prioritization scheme to select facilities for inspection, and the inspection frequency for each priority level.

The county has developed a list of all industrial and commercial facilities in Chesterfield County. The list contains approximately 334 facilities all of which are subject to industrial inspections under the "Industrial Facility Inspection Protocol" (Exhibit 7, Industrial Facility Inspection Protocol). Chesterfield County updates the list continually based on economic development information and VPDES permits.

Each facility is assigned an inspection priority category between 1 and 5. Category 1 facilities pose the least risk to the environment and do not require inspections but are maintained in the database for tracking purposes. Category 2 and 3 facilities have the potential for illicit discharges and require inspections on an as needed basis. Category 4 and 5 facilities have one or more of the following characteristics:

- Have an NPDES/VPDES permit,
- Are categorized under SARA Title III,
- Handle or create hazardous waste as a byproduct of their manufacturing process,
- Store hazardous materials, or
- Operate a municipal landfill.

These facilities pose the greatest environmental risk and require annual inspections.

#### III.D.2. Industrial and Commercial Facility Inspections

Chesterfield County derives its authority to conduct industrial and commercial inspections from Section 12-63 of the County Illicit Discharge Ordinance (Exhibit 8, Illicit Discharge Ordinance). The ordinance states that the county has "the authority to inspect and monitor discharges and sources of potential discharge to the storm sewer system to ensure compliance with this article, including the authority to enter upon private property to inspect or monitor such discharges or sources of potential discharge."

While the county has the authority to conduct inspections, routine inspections have not been performed since the industrial inspector position was eliminated in 2005 due to budget constraints. County staff indicated that, due to the lack of resources, industrial inspections are only conducted as a result of a citizen complaint, if observations provided by the other county agencies warrant an inspection, or when an illicit discharge is detected during an outfall inspection. In 2009, nine inspections were conducted in response to citizen complaints. County inspectors including fire code inspectors, zoning inspectors, and industrial pretreatment inspectors all conduct regular inspections and may notify the Water Quality staff if stormwater issues are observed during their inspections. The county offers a stormwater class two to three times a year, but not all county personnel who may be involved in identifying stormwater issues are required to attend the class. The class includes basic information on common stormwater pollutants and practices to minimize pollutant discharges to the storm sewer system; however, the class does not identify stormwater issues and requirements specific to industrial and commercial sites.

The county's "Industrial Facility Inspection Protocol" describes the facility information that should be reviewed prior to conducting an inspection. It also instructs the inspector to visually inspect the outfalls and storm drains on site and to conduct field testing using the HydroLab where dry weather flows are observed. The County Water Quality Manager described the typical steps taken during the inspection. The inspector first meets with the plant manager or the environmental supervisor and reviews the permits and stormwater pollution prevention and spill control and prevention plans. Next, an inspection of the internal areas is conducted focusing on floor drains and potential hot spots. The inspector takes photos and makes notes on a map of the facility. Outside the facility, the inspector notes impervious cover, uncovered storage areas, and vehicles in disrepair. The county has also developed industrial facility inspection forms that the inspector would use to record all pertinent information during the inspection. After an inspection is completed, the inspector uses the inspection form, his field notes, and his photos to write a memorandum to the facility describing the inspection and identifying corrective actions. The county has the ability to issue Notices of Violation if corrective actions are not completed.

### Observation 4. The county of Chesterfield did not have an industrial inspector to complete the inspections required by Part I.B.1.c(1) and I.B.1.c(2) of the permit.

Part I.C.4 of the permit requires that Chesterfield "provide adequate finances, staff, equipment and support capabilities to implement all parts of the Storm Water Management Program required by Part I.B of this permit." While Part I.B.I.c(1) and I.B.1.c(2) require inspections of industrial and commercial facilities identified by the county, the industrial inspector position was eliminated in 2005 due to county budget constraints and this position remains vacant. Routine industrial inspections have not been performed in nearly 5 years.

On April 22, 2010, during an inspection of service drive areas and trash collection areas behind a grocery store, department store (Kmart), and home improvement store (Lowes) located along Jefferson Davis Highway, the EPA inspection team noted grease, paint stains, and trash being discharged to the MS4. Stormwater outfalls from these particular locations had not been previously inspected by the county and the Chesterfield County inspector accompanying the EPA inspection team stated that these observations would trigger an industrial inspection. Currently, it is unknown if an industrial inspection was initiated at these locations. The EPA inspection team formally requested documentation of the industrial inspection;

however, documentation has not yet been provided (Exhibit 9, Team 1 Email Industrial Inspection Records Request). Discussions with Chesterfield County MS4 staff indicated that ideally, two additional staff would be needed to fully implement the industrial inspection program. One inspector would be responsible for high priority facilities (designated as categories 4 or 5) and the other would inspect all other facilities (categories 1 through 3). However, Chesterfield County has no current plans to hire these staff members.

### Observation 5. The county of Chesterfield did not have a formal training program for identifying stormwater issues on industrial and commercial sites.

County staff indicated that while they do not have an industrial stormwater inspector, other county departments, including Fire & EMS, Industrial Pretreatment, and Zoning, all conduct inspections and notify Water Quality when stormwater issues are noted. However, not all departments require staff to be trained on the identification of stormwater issues. The county offers a stormwater class, but not all county personnel who may be involved in identifying stormwater issues are required to attend the class. Without standardized training requirements, the county cannot consistently identify stormwater issues to "monitor and control pollutants in storm water discharges" from industrial and commercial facilities as required by Part I.B.1.c of the permit.

#### III.D.3. County-owned Industrial Facilities

#### Site: Chesterfield County Fleet Maintenance Facility – 9700 Lori Lane, Chesterfield, VA

On April 21, 2010, the EPA inspection team visited the County Fleet Maintenance Facility. The facility is International Organization of Standardization (ISO) 14001 certified. The inspection began inside the garage, proceeded to the parking and damaged vehicle storage area, and also included the vehicle wash rack and the storm ditch near the front of the property. A portion of the site near the wash rack was under construction. During the site visit, the EPA inspection team observed the following:

- An uncovered garbage truck containing trash was located on site near a drainage swale in the lot.
- A police vehicle with the hood removed, exposing the battery, radiator, and brake-fluid housing to precipitation was located on the unpaved portion of the parking area.
- Sediment had accumulated in the corner of the paved parking lot.
- A silt fence protecting the MS4 drainage channel from the construction area was undermined (Photographs 1 and 2). It appeared that the silt fence had been placed in the path of concentrated flow. Sediment was present in the channel.

### Observation 6. The county of Chesterfield was not adequately minimizing pollutant discharges from county industrial facilities.

Part I.C.1 of the permit states that "the permittee shall ensure that all pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable." An inspection of the vehicle maintenance lot found that a garbage truck containing open trash had been parked adjacent to a drainage swale in the lot, and water was flowing past the garbage truck to an offsite location. The garbage truck appeared to be waiting for maintenance. In addition, one vehicle was observed with the hood removed, exposing the battery, radiator, and brake-fluid housing to precipitation. Although the county-owned vehicle maintenance facility is ISO 14001 certified and appears to have good house-keeping measures to prevent release of fluids to the MS4, additional attention should be given to vehicles placed in the county's lot waiting for service.

#### III.E. Requirement I.B.1.d – Runoff from Construction Sites

Part I.B.1.d of the permit requires a program to implement and maintain structural and nonstructural best management practices to reduce pollutants in stormwater runoff from construction sites, which the county addresses through a program referred to as its Erosion and Sediment Control (ESC) Program. The County ESC Program components and applicable requirements related to this section of the permit are discussed below.

The primary staff responsible for the county's ESC Program include representatives of two operational teams within the County Department of Environmental Engineering: the Plans Review Team and Field Construction Inspections Team. The Plans Review Team is comprised of the same staff used in the county's Structural and Source Control Measures Program. The Field Construction Inspections Team is led by the County ESC Program Administrator and is organized into two teams (i.e., Team A and Team B), each with an ESC Inspection Supervisor and four ESC inspectors which are assigned to geographic areas (i.e., Areas 1 through 8). The ESC inspectors conduct inspections pursuant to the Virginia Erosion and Sediment Control Regulations, 4VAC50-30-60B, Maintenance and inspections, requires Chesterfield County to "provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds."

Additionally, the County Department of Environmental Engineering has enlisted the assistance of the Building Inspections Department to conduct ESC inspections in conjunction with its building inspections of single-family dwellings. Building Inspections Department staff who conduct ESC inspections have received training through the DCR training and certification program. The Building Inspections Department staff are utilized to maintain a field presence and identify ESC issues at construction sites. The County Department of Environmental Engineering's dedicated ESC inspectors are used to conduct follow-up and obtain corrective action for the issues identified by Building Inspections Department staff at construction sites involving single family homes.

The county uses the Program Administration Status System (PASS), a land development program database, to maintain records pertaining to both the Structural and Source Control Measures Program and the ESC Program. Specifically, PASS is used to maintain records associated with state mandated requirements for plan review, project inspection activities and frequency, and regulatory performance reporting. In 2009, the departments of Environmental Engineering and Information Systems Technology collaborated in the development of the PASS interface, which is designed for staff to enter information about projects, permits, and sureties and also view that information as part of the Department of Environmental Engineering's processes.

# Observation 7. The county of Chesterfield had not developed standard procedures for consistent and progressive escalation of its available enforcement actions based on inspection observations.

Part I.B.1.d of the permit requires a "program to continue implementation and maintenance of structural and nonstructural best management practices to reduce pollutants in storm water runoff *from* construction sites [emphasis added]."

The EPA inspection team observed that the county differentiates between what it considers to be a violation of local code and a discrepancy. PASS, for example, provides separate interface tabs for entering a discrepancy and entering a violation (Exhibit 10, PASS screenshot). The EPA inspection team questioned County Department of Environmental Engineering staff to determine how a discrepancy gets elevated to a violation (Exhibit 11, PASS permit status). The County ESC Program Administrator

explained that the county does not consider construction site operators to be in violation of local code until the operator has been issued a notice to comply, and the operator then fails to meet the timeframe for corrective action specified in the notice to comply. For example, a notice to comply dated August 12, 2009, lists a number of "deficiencies" and states "failure to comply within the time specified above will result in the issuance of a civil penalty" (Exhibit 12, Magnolia Lakes notice to comply). The County ESC Program Administrator further indicated that the county does not have an enforcement response plan or guide, and that enforcement is a discretionary process. Enforcement response plans typically provide clear guidelines for consistent and progressive escalation of the available enforcement actions based on inspection observations, particularly as it relates to recurring issues, repeat violations, and recalcitrant site operators. In contrast, the *Chesterfield County Inspectors Reference Manual* (hereafter, County ESC Inspection Manual), Section 6.0, describes a civil penalties process that begins with the inspector observing non-compliance, rather than at the initial step of identifying a discrepancy.

The EPA inspection team also questioned County Department of Environmental Engineering staff to determine what types of erosion and sediment control issues qualify as a violation of county code. The County ESC Program Administrator and ESC Inspection Supervisor for Team A indicated that they could not recall a situation that was an immediate violation of county code, and that a sediment release from a construction site is handled the same as any other type of "discrepancy." Therefore, in the event of a sediment release, construction site operators would not be found in violation of local code until the operator has been issued a notice to comply, and the operator then failed to meet the timeframe for corrective action specified in the notice to comply. In other words, the County ESC Inspectors would provide construction site operators with the opportunity to correct a sediment release to the MS4, rather than qualifying the matter as an immediate violation of county code. Under this approach, Chesterfield County does not consider each construction site boundary as a point of operational control to reduce pollutants in stormwater runoff *from* construction sites, particularly in the event of a sediment release or discharge from a construction site.

As evidenced below, the EPA inspection team observed an example of this approach at a county school district construction site. Specifically, the EPA inspection team witnessed an inspection of Clover Hill High School, Genito Road (County Land Disturbance Permit No. 202868) performed by the County ESC Inspector for Area 7. During the EPA inspection team's site visit on April 22, 2010, it was observed that silt fence and stone installed in an area of concentrated flow along Old Hundred Road had failed (Photographs 3 through 6), and sediment had been discharged from the construction site boundary (Photographs 4, 5, 7, and 8) through a drainage culvert leading under Old Hundred Road (Photographs 9 and 10). The County ESC Inspector for Area 7 did not identify this issue while on site. Both of the County ESC Inspection Supervisors (Team A and Team B) were present during the site visit, but did not express that the sediment discharged from the construction site boundary was an actionable deficiency.

Subsequent to the MS4 Inspection, the EPA inspection team reviewed the county's inspection files containing county inspection records and follow-up responses for three construction sites that were visited as part of the MS4 Inspection. The specific county inspection records obtained and reviewed were the following: (a) Clover Hill High School, Genito Road (County Land Disturbance Permit No. 202868) records from September 16, 2009 to March 30, 2010; (b) Magnolia Lakes (County Land Disturbance Permit No. 202732) records from August 11, 2009 to November 13, 2009; and (c) Swift Creek Middle School Auditorium Addition (County Land Disturbance Permit No. 300085) records from November 3, 2009 to April 6, 2010. Collectively, 33 county ESC inspections were conducted at the three construction sites during the above-specified time periods. None of the 33 county ESC inspections identified a sediment discharge beyond the construction site boundary as an actionable discrepancy or violation. In contrast, the EPA inspection team observed sediment that had been discharged beyond the construction site boundary at both Clover Hill High School, Genito Road and Magnolia Lakes (see Observation 9 below for additional details).

In multiple inspection reports for the Clover Hill High School, Genito Road construction site, the County ESC Inspector for Area 7 indicated "site not stabilized as required" and qualified these issues as discrepancies, but the inspection records did not show progressively stricter enforcement for similar and/or recurring discrepancies (Exhibit 13, Clover Hill High School PASS Inspection). Furthermore, these inspection records did not have sufficient detail to demonstrate that specific corrective actions were taken, and appropriate follow-up enforcement responses were conducted.

### Observation 8. The county of Chesterfield ESC inspectors did not assess non-sediment, construction site pollutant sources.

Part I.B.1.d of the permit requires a "program to continue implementation and maintenance of structural and nonstructural best management practices [i.e., temporary construction site BMPs] to reduce *pollutants* in storm water runoff from construction sites [emphasis added]."

In contrast to this requirement, the County ESC Inspectors have not been tasked with assessing construction site pollutant sources other than sediment-generating sources. The County ESC Inspection Supervisor for Team A explained that the County ESC Inspectors can only enforce the Chesterfield County Erosion and Sediment Control Ordinance under authority granted by the Virginia Erosion and Sediment Control Law. The Virginia Erosion and Sediment Control Regulations (4VAC50-30) have been promulgated to administer, implement, and enforce the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Virginia Code). However, the Virginia Erosion and Sediment Control Regulations pertain only to "erosion and sediment control concerns," and mandate the adoption of erosion and sediment control programs by localities, which dictates the scope of the local program (Exhibit 14, VESCR). Section 8-1.1 of the Chesterfield County Erosion and Sediment Control Ordinance states "pursuant to Va. Code § 10-562, Chesterfield County adopts the Virginia Erosion and Sediment Control Regulations as the authority that governs the county's local erosion and sediment control program." Accordingly, the county's inspection checklist does not include a non-sediment component or question set, and the PASS database system does not track non-sediment deficiencies at construction sites (Exhibit 15, PASS Inspections Checklist).

The EPA inspection team conducted site visits at the following three construction sites located in the jurisdictional boundaries of the county and/or served by the county's MS4: 1) Clover Hill High School, Genito Road (County Land Disturbance Permit No. 202868), 2) Magnolia Lakes (County Land Disturbance Permit No. 202732), and 3) Swift Creek Middle School Auditorium Addition (County Land Disturbance Permit No. 300085). At two of the three construction sites, the EPA inspection team observed deficiencies pertaining to non-sediment pollutants such as construction chemicals, fertilizers, and fuels.

At Clover Hill High School, Genito Road, a county school district construction site, pallets of soil amendments were stored outdoors without overhead coverage (Photograph 11). The soil amendments included lime and fertilizers. One bag of fertilizer was open and the contents were wet, indicating that the soil amendments had been exposed to stormwater contact (Photographs 12 and 13). In addition, a partially-filled container of concrete chemical was stored outdoors without overhead coverage (Photograph 14).

At the Swift Creek Middle School Auditorium Addition, another county school district construction site, diesel residues were present on a fuel tank (Photograph 15). Although the fuel tank was placed in a secondary containment tub, it had accumulated standing water (Photograph 16). Standing water has the potential to increase stormwater contact with pollutants, particularly during fueling and loading operations. Additionally, a partially-filled container of concrete chemical was stored outdoors without overhead coverage (Photograph 17).

During the closing conference, the EPA inspection team had a dialogue with the county on the possibility of addressing non-sediment pollutants through the County Illicit Discharge Ordinance and empowering the County ESC Inspectors to assess non-sediment construction site pollutant sources such as: construction chemicals; vehicle and equipment maintenance and fueling; paving and grinding; spill prevention and control; solid waste; concrete waste and wash water; and sanitary/septic waste (e.g., portable toilets).

Observation 9. The county of Chesterfield's plan review and approval, field inspection, and plan change processes were not in accordance with the Chesterfield County Erosion and Sediment Control Ordinance for the Magnolia Lakes construction site.

Part I.B.1.d(1) of the permit requires Chesterfield County to "continue to implement the requirements of the Erosion and Sediment Control Ordinance for land disturbing activities." The Chesterfield County Erosion and Sediment Control Ordinance requires all applicants for county land-disturbance permits to submit an erosion and sediment control plan for review and approval by the county.

Section 8-7 of the Chesterfield County Erosion and Sediment Control Ordinance states "an approved [ESC] plan may be changed by the plan-approving authority when: (a) an inspection reveals that the plan is inadequate to control erosion and sedimentation and to satisfy applicable laws and/or regulations; or (b) the responsible land disturber finds that because of changed circumstances or other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this chapter [Chapter 8, Erosion and Sediment Control], are agreed to by the plan-approving authority [Chesterfield County]."

The EPA inspection team conducted a site visit at the Magnolia Lakes (County Land Disturbance Permit No. 202732) construction site located in the jurisdictional boundaries of the county and/or served by the county's MS4. Several issues were observed at the Magnolia Lakes construction site which indicated deficient application of the county's plan review and approval, field inspection, and plan change processes. These issues are discussed below.

Sheet No. C21 of the county-approved Magnolia Lakes ESC Plan, Phase 2 specifies the implementation of temporary Sediment Basin #4, and that "all disturbed areas are to drain to approved sediment control measures at all times during land disturbing activities and during site development until final stabilization is achieved" (Exhibit 16, Sheet C21). The criteria for final stabilization through the use of a permanent vegetative cover are specified in the Minimum Standards of the Virginia Erosion and Sediment Control Regulations (4VAC50-30-40). Minimum Standard No. 3 states "a permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized [e.g., paved]. Permanent vegetation shall not be considered established until a ground cover is achieved that is *uniform*, *mature enough to survive*, and will inhibit erosion [emphasis added]."

In contrast to Minimum Standard No. 3, the EPA inspection team observed that the intended contributing area to Sediment Basin #4 had not achieved final stabilization with permanent vegetation, and denuded areas were not otherwise permanently stabilized. Specifically, a uniform vegetative cover was not established, and rill and gully erosion was observed in the contributing area (Photographs 18 through 20). The County ESC Inspector for Area 5 indicated that the site had been seeded multiple times, but the site operator had difficulty getting the seed established.

Although the county-approved Magnolia Lakes ESC Plan, Phase 2 specifies the implementation of temporary Sediment Basin #4, and that "all disturbed areas are to drain to approved sediment control measures at all times during land disturbing activities and during site development until final stabilization is achieved," Sediment Basin #4 had been removed and/or filled-in. Photograph 21 shows the general area

where the former Sediment Basin #4 had been located. The County ESC Inspector for Area 5 explained that he had approved the removal of Sediment Basin #4 based on an assessment of stabilization. The most recent county ESC inspection was conducted on November 13, 2009. The ESC Inspection Supervisor for Team B explained that the site had been idle for some time, and the November 13, 2009 inspection was the most recent because the operator had just recently been issued a building permit for vertical construction.

Section 8-5 of the Chesterfield County Erosion and Sediment Control Ordinance states that the county has the right to enter property having a land-disturbance permit "for the purpose of inspecting the property to determine whether the requirements of this chapter [Chapter 8, Erosion and Sediment Control] and of the approved erosion and sediment control plan are being met." In his November 13, 2009 inspection report, the County ESC Inspector for Area 5 indicated "all denuded areas stabilized as required" and "all required structural control practices installed properly" (Exhibit 17, Magnolia Lakes PASS Inspection). However, this was not the case at the time of the EPA inspection team's site visit on April 22, 2010. According to the ESC Inspection Supervisor for Team B, the removal of Sediment Basin #4 had been approved by the County ESC Inspector for Area 5 in a phone conversation and had not been formally documented. Based on this body of evidence, the change in the county-approved ESC plan was not carried out in accordance with Section 8-7 of the Chesterfield County Erosion and Sediment Control Ordinance.

Moreover, the EPA inspection team observed a demonstrated need for the former Sediment Basin #4. Specifically, an eroded flow pathway was observed leading from the former Sediment Basin #4 contributing area (Photographs 21 and 22). Sediment had accumulated in a down-gradient area where rock had been placed, which was likely the former Sediment Basin #4 outlet location (Photograph 23). Sections of the silt fence down-gradient of the former Sediment Basin #4 had collapsed, and sediment was observed beyond the silt fence (Photographs 24 through 26). Due to the removal of Sediment Basin #4 and the collapsed silt fence, there was a resulting discharge of sediment beyond the construction site boundary.

Additionally, a turbidity curtain had been installed approximately 75 feet down-gradient of the former Sediment Basin #4 outlet, in the receiving waterbody referred to as Sportsman Lake (Photograph 27). In another area of the site, a second turbidity curtain had been installed approximately 50 feet down-gradient of the existing Sediment Basin #1 outlet, in Sportsman Lake (Photographs 28 and 29). Part I.B.1.d(1) of the permit requires Chesterfield County to "continue to implement the requirements of the Erosion and Sediment Control Ordinance for land disturbing activities." Section 8-6(d) of the Chesterfield County Erosion and Sediment Control Ordinance states "the [county] environmental engineer shall require all erosion and sediment control plans to comply with the conservation standards and specifications contained in the Virginia Erosion and Sediment Control Handbook before they are approved." Sheet No. C21 of the county-approved Magnolia Lakes ESC Plan, Phase 2 specifies the implementation of turbidity curtains in these locations (Exhibit 16, Sheet C21). In contrast, the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Standard and Specification 3.27, Turbidity Curtain, states that turbidity curtains are applicable "where intrusion into the watercourse by construction activities and subsequent sediment movement is unavoidable." Site conditions observed by the EPA inspection team did not suggest that intrusion into Sportsman Lake was unavoidable. As a result, the county-approved Magnolia Lakes ESC Plan was not in accordance with Section 8-6(d) of the Chesterfield County Erosion and Sediment Control Ordinance.

### BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

#### 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

In the Matter of:	: : :	ADMINISTRATIVE ORDER
City of Lynchburg	: :	ON CONSENT
Respondent.	; ; ;	Docket No. CWA-03-2013-0129DN
	:	

#### I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

- 1. EPA has made the following findings of fact and issues this Administrative Order on Consent (Consent Order) pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under Section 309(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.
- 2. Section 309 of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such section or requirement.

#### II. FINDINGS of FACT and CONCLUSIONS OF LAW

- 3. Section 301(a) of the Act, 33 U.S.C. § 1311, prohibits the discharge of any pollutant by any person from a point source to navigable waters except in compliance with, among other things, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
- 4. Section 402 of the Act, 33 U.S.C. § 1342, provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants or may authorize

states to issue such permits.

- 5. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water discharges are "point sources" subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
- 6. Section 402(p) of the Act, 33 U.S.C. § 1342(p), provides that discharges from a municipal separate storm sewer system (MS4) and storm water discharges associated with industrial activity may be subject to NPDES permitting requirements.
- 7. Pursuant to 40 C.F.R. §122.26(a)(9)(i), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32.
- 8. The City of Lynchburg, Virginia ("Lynchburg", "City" or "Respondent") is a municipality within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).
- 9. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." *Id.* § 122.26(b)(13).
- 10. The term "municipal separate storm sewer system" or "MS4" is defined, in part, as "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).
- 11. The term "small municipal separate storm sewer system" or "small MS4" means "all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water. . . .; [and] (ii) Not defined as "large" or "medium" municipal separate storm sewer systems." 40 C.F.R. § 122.26(b)(16).
- 12. Pursuant to 40 C.F.R. §122.32(a)(1), the Virginia Department of Conservation and Recreation ("VADCR" or "the Department") has determined that Lynchburg is a small MS4 located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, and accordingly requires an NPDES permit

- 13. Therefore, Lynchburg is a "small MS4" within the meaning of 40 C.F.R. § 122.26(b)(16).
- 14. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Virginia to issue NPDES permits in 1975. In 1991, EPA authorized Virginia to issue General NPDES Permits.
- 15. On July 9, 2008, VADCR issued a General NPDES Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems a/k/a Authorization to Discharge (MS4 Permit) to Lynchburg. The Permit is scheduled to expire on July 8, 2013.
- 16. The MS4 Permit authorizes discharges of storm water from Respondent's MS4 to waters of the Commonwealth of Virginia with exceptions that are not relevant here.
- 17. On March 5 and 6, 2012 representatives of EPA conducted an inspection of Lynchburg's MS4 program implementation.
- 18. On November 2, 2012, EPA issued the City of Lynchburg, Virginia Municipal Separate Storm Sewer System (MS4) Program Inspection Report (Inspection Report), which included, in addition to general information regarding the City's MS4 program and history, fourteen (14) observations regarding the City's MS4 Program related to the requirements of the current MS4 Permit (VAR04, effective July 9, 2008). The Inspection Report also included 8 attachments (exhibit log, photo log, document log, etc.).
- 19. The City received a copy of the Inspection Report by electronic mail dated February 7, 2013. The City prepared and submitted a response to EPA on March 25, 2013.
- 20. Based upon the March 5 and 6, 2012 inspection, EPA identified three categories of violations, among the fourteen (14) observations, which it has concluded were violations of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311. This Consent Order addresses these categories and directs the City to take the corrective action described below to comply with its current MS4 Permit (VAR04, effective July 9, 2008).
- 21. Section II.B.4.a of the MS4 Permit states that "the operator shall develop, implement, and enforce procedures to reduce pollutants in any stormwater runoff to the regulated small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act."
- 22. EPA observed a number of stormwater control deficiencies at the private construction projects it visited during the March 5 and 6, 2012 inspection. These deficiencies included, among others, inadequate inlet protections, and sediment tracking observed on the

roadway adjacent to a site's construction entrance.

- 23. Section II.B.5.b(4) of the MS4 Permit requires Lynchburg to require "adequate long-term operation and maintenance by the owner of structural stormwater management facilities through requiring the owner to develop a recorded inspection schedule and maintenance agreement to the extent allowable under state, tribal or local law or other legal mechanism. The operator shall additionally develop, through the maintenance agreement or other method, a mechanism for enforcement of maintenance responsibilities by the operator if they are neglected by the owner".
- 24. At the time of the inspection, Lynchburg had not established the maintenance agreements described in Paragraph 23 for 2 privately owned post-construction structural stormwater management facilities (also known as post-construction BMPs) within the City.
- 25. Section II.B.5.b.(5) of the Permit requires Lynchburg to "conduct site inspection[s] and enforcement measures [of post construction BMPs] consistent with the Virginia Stormwater Management Act and attendant regulations." At the time of the inspection, the City had not developed a program or procedure for verifying the accuracy of BMP inspection records submitted to the City by private BMP owners and the City did not have a guidance document or procedure for enforcement to ensure adequate long-term operation and maintenance of post-construction BMPs in the City.
- Section II.B.6 of the Permit, Pollution Prevention/Good Housekeeping for 26. Municipal Operations, requires the City "develop and implement an operation and maintenance program consistent with the MS4 Program Plan that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations...The operator shall identify, implement, evaluate and modify, as necessary, BMPs to meet the following pollution prevention/good housekeeping for municipal operations measurable goals: a. Operation and maintenance programs including activities, schedules, and inspection procedures shall include provisions and controls to reduce pollutant discharges into the regulated small MS4 and receiving surface waters; b. Illicit discharges shall be eliminated from storage yards, fleet or maintenance shops, outdoor storage areas, rest areas, waste transfer stations, and other municipal facilities; c. Waste materials shall be disposed of properly; d. Materials that are soluble or erodible shall be protected from exposure to precipitation; e. Materials, including but not limited to fertilizers and pesticides, that have the potential to pollute receiving surface waters shall be applied according to manufacturer's recommendations; and f. For state agencies with lands where nutrients are applied, nutrient management plans shall be developed and implemented in accordance with the requirements of §10.1-104.4 of the Code of Virginia."
- 27. At the time of the inspection, EPA observed multiple stormwater control measure deficiencies at the municipally-owned sites it visited during the March 5 and 6, 2012 inspection. These deficiencies included, among others, not establishing inspection schedules or utilizing drip pans to prevent vehicle fluids from contacting stormwater during rain events, and not protecting

storm drain inlets downgradient from storage and unloading areas from pollutant exposure.

28. Based upon the inspection, EPA has concluded that Respondent's failures to: 1) identify and implement, evaluate and modify as necessary, BMPs to eliminate illicit discharges from public works yards, storage yards, fleet or maintenance shops, and outdoor storage areas; 2) develop, implement, and enforce procedures to reduce pollutants in any stormwater runoff to the regulated small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet; 3) and ensure the adequate long-term operation and maintenance of structural stormwater management facilities by the owners through requiring development of recorded inspection schedules and maintenance agreements to the extent allowable under state, tribal or local law or other legal mechanism, violate the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

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AND NOW, this	day of	_, 2013, pursuant to section
309(a) of the Act, 33 U.S.C. § 1319(a)	, having taken into accoun	nt the seriousness of the
violations and any good faith efforts by	y Respondent to comply w	ith section 301(a) of the Act,
Respondent is hereby ORDERED, pur	suant to Section 309(a) to	do the following:

- 1. Respondent shall take all actions necessary to comply with its MS4 Permit, including:
  - a. Develop and implement a plan within 6 months of the effective date of this Order to inspect all active construction sites with E&S controls on an established schedule and to pursue enforcement on active construction sites based upon set criteria. Submit this plan to EPA for comment;
  - b. Develop and implement a plan within 6 months of the effective date of this Order to ensure the post-construction structural stormwater management facilities are inspected by the applicable owners and that proper enforcement measures are taken when necessary. Submit this plan to EPA for comment;
  - c. Develop and implement a plan within 6 months of the effective date of this Order to review, modify and implement Standard Operating Procedures (SOP) as necessary and provide training regarding SOP modifications for appropriate city employees to meet the pollution prevention/good housekeeping goals for municipal operations outlined in Lynchburg's MS4 Permit. Submit this plan to EPA for comment.
- 2. All documents required by Paragraph 1 of this Section shall be accompanied by a certification signed by a responsible corporate officer, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed	
Title	

All documents required herein shall be submitted to:

Matthew R. Colip NPDES Enforcement Officer NPDES Enforcement Branch Mail Code (3WP42) U.S. EPA, Region III 1650 Arch Street Philadelphia, PA 19103-2029

#### IV. GENERAL PROVISIONS

- 1. Issuance of this Consent Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Order, following its effective date (as defined below).
- 2. This Order does not constitute a waiver or modification of the terms or conditions of the City's MS4 permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
  - 3. For the purposes of this proceeding, the City neither admits nor denies the factual

allegations and conclusions of law set forth in this Order.

- 4. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
- 5. By entering this Order, the City does not admit any liability for the civil claims alleged herein.

#### V. EFFECTIVE DATE

This ORDER is effective after receipt by Respondent of the final executed document.

SO ORDERED:	
Date:	Jon Capacasa Director, Water Protection Division U.S. EPA Region III
AGREED TO:	For City of Lynchburg:
Date:	Name
	Title



#### CITY OF LYNCHBURG, VIRGINA MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PROGRAM INSPECTION REPORT

City of Lynchburg, VA 900 Church St. Lynchburg, VA 24504

Final Report Date: November 2, 2012

Field Activity Dates: March 5–6, 2012

Office of Compliance and Enforcement U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, NW Washington, D.C. 20460

U.S. Environmental Protection Agency, Region III
Water Protection Division
Office of NPDES Enforcement (3WP42)
1650 Arch Street
Philadelphia, PA 19103



#### DOCUMENTS CITED IN REPORT

Shortened Name	Document Title and Date	
2007 IDDE Document	The City's 2007 IDDE Program Description Document	
City's MS4 Program Plan	City of Lynchburg MS4 Program Plan submitted in its 2009 permit registration statement, dated February 19, 2009	
City Response Inventory	Inventory of documents provided by the City in response to the EPA Records Request	
EPA Records Request	List of documents that the EPA Inspection Team requested from the City on February 15, 2012	
Permit	Virginia Department of Conservation and Recreation (DCR) General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems, General Permit No. VAR04 (Permit Registration No. VAR040008), effective July 9, 2008	
VSMP Permit	VSMP General Permit for Discharges of Stormwater from Construction Activities	

#### ACRONYMS AND ABBREVIATIONS USED IN REPORT

Abbreviation	Corresponding Term	
AlLs	agreements-in-lieu	
ВМР	best management practice	
CSS	combined sewer system	
CSO	combined sewer overflow	
DCR	Virginia Department of Conservation and Recreation	
EPA	[United States] Environmental Protection Agency	
GIS	geographic information system	
GPS	global positioning system	
IDDE	illicit discharge detection and elimination	
MS4	municipal separate storm sewer system	
SOP	standard operating procedures	
SWAC	Citizen's Stormwater Advisory Committee	
SWMA	stormwater maintenance agreement	
SWPPP	stormwater pollution prevention plan	
VSMP	Virginia Stormwater Management Program	
VPDES	Virginia Pollutant Discharge Elimination System	

#### **EXECUTIVE SUMMARY**

From March 5 through 6, 2012, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), and EPA's contractor, PG Environmental, LLC (PG), inspected the municipal separate storm sewer system (MS4) program of the City of Lynchburg, Virginia (hereinafter, City).

The purpose of this inspection was to obtain information that will assist EPA in assessing the City's compliance with the requirements of the Permit, as well as the implementation status of its current MS4 Program.

Based on the information obtained and reviewed, EPA's compliance inspection team made several observations concerning the City's MS4 program related to the specific permit requirements evaluated. Table 1 below summarizes the permit requirements and the observations made by the inspection team.

Table 1. Summary of Permit Requirements and Inspection Observations

Permit Requirement		Observations
Permit Section II.B.3.b (Storm Sewer System Map)	Observation 1.	The City Department of Water Resources maintains a map of its storm sewer system in an electronic geographic information system (GIS)-based mapping program. The map includes MS4 components such as post-construction BMPs, inlets, culverts, pipes, ditches, outfalls, and surface waters.
Permit Section II.B.3.c (Prohibition of Nonstormwater Discharges to the MS4)	Observation 2.	The City had adopted an ordinance at Chapter 16.2, Article V, <i>Stormwater Pollution Control</i> , of the City Code to prohibit nonstormwater discharges to the MS4. Section 16.2-76, <i>Violations and penalties</i> , of the ordinance includes the definition of violations and penalties that can be assessed by the City for any acts committed that are prohibited by the ordinance.
Permit Section II.B.3.d (IDDE Procedures)	Observation 3.	The City's illicit discharge detection and elimination program document had not been updated since the illicit discharge detection and elimination (IDDE) program was initiated in 2007.
Permit Section II.B.4.a(5) (Construction Site Inspection and Enforcement)	Observation 4.	The City had not achieved its stated program requirement of inspecting all active construction sites in the City every two weeks and within 48 hours of any runoff producing storm event.

**Table 1. Summary of Permit Requirements and Inspection Observations** 

Permit Requirement		Observations
Construction Site Visits Conducted as a Component of the Inspection	Observations 5 –	7. On March 6, 2012, the EPA Inspection Team conducted site visits at three privately owned and operated construction projects within the jurisdictional boundaries of the City: (1) Cornerstone Development, (2) University Square, and (3) Belleview Subdivision. Specific observations regarding the site visits are included in the main body of the report.
Permit Section II.B.5.b(4) (Long-term Operation and Maintenance of Structural Stormwater Management Facilities)	Observation 8.	According to City staff, the City has about 255 structural stormwater management facilities (a.k.a., post-construction BMPs), of which about 214 are privately-owned and 41 are owned by the City. The City maintenance crews are responsible for conducting maintenance activities for the 41 City-owned BMPs. Most of the BMPs are maintained on an annual basis, though some are maintained more frequently.
	Observation 9.	According to the City Water Quality Manager and City Environmental Reviewer, the City requires stormwater maintenance agreements (SWMAs) for privately owned post-construction BMPs. As explained by the City Water Quality Manger, the City had established SWMAs for 201 of the 214 privately owned post-construction BMPs within the City and 76 of those SWMAs were recorded with the associated property deeds. About 125 of them were not recorded with the associated property deeds at the time of the inspection. The City had not established SWMAs for about 13 privately owned post-construction BMPs within the City.
Permit Section II.B.5.b(5) (Site Inspection and Enforcement for Structural Stormwater Management Facilities)	Observation 10.	Inspections of privately owned post-construction stormwater management facilities had not been conducted on an annual basis to ensure that the facilities were adequately operated and maintained. As stated above, there are about 214 privately owned post-construction BMPs in the City. The City Water Quality Manager explained that the City does not conduct inspections of private post-construction BMPs. The City relies on the BMP owners to conduct annual inspections and perform corrective maintenance, if needed, and provide proof of the actions to the City. Additional details regarding the inspection and maintenance of post-construction BMPs is included in the main body of the report.
Permit Section II.B.6 (Pollution Prevention/Good Housekeeping for Municipal Operations)	Observations 11	On March 5, 2012, the EPA Inspection Team conducted site visits to the following sites: (1) Public Works and Fleet Maintenance Compound, (2) Stadium Storage Yard, and (3) Graves Mill Road Storage Yard. Specific observations regarding the site visits are included in the main body of the report



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#### INTRODUCTION

From March 5 through 6, 2012, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), and EPA's contractor, PG Environmental, LLC (PG), inspected the municipal separate storm sewer system (MS4) program of the City of Lynchburg, Virginia (hereinafter, City). Discharges from the City's MS4 are regulated by the Virginia Department of Conservation and Recreation General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems, General Permit No. VAR04 (Permit Registration No. VAR040008; hereinafter, the Permit), effective July 9, 2008. The Permit expires July 8, 2013. A copy of the Permit is included as Attachment 1. A copy of the City's MS4 Program Plan is included as Attachment 2.

The purpose of this inspection was to obtain information that will assist EPA in assessing the City's compliance with the requirements of the Permit, as well as the implementation status of its current MS4 Program. The inspection schedule is presented in Attachment 3.

The EPA Inspection Team obtained its information through a series of interviews with representatives from the City, along with a series of site visits, record reviews, and field verification activities. The primary representatives involved in the inspection were the following:

City Department of Mr. Tim Mitchell, Director of Water Resources

Water Resources: Mr. Greg Rupp, Assistant Director of Water Resources

Ms. Erin Hawkins, Water Quality Manager Mr. James Talian, Water Quality Manager

Ms. Geneva Hudgins, Technical Services Coordinator

Mr. Jeff Martin, Safety Coordinator

City Department of

Mr. Charles Grant, Construction Inspector Public Works: Mr. Stephen Grandstaff, Safety Coordinator

Mr. Andrew Dinsmore, EPA Region 3 EPA Representatives:

> Mr. Matt Colip, EPA Region 3 Ms. Rebecca Glyn, EPA Region 3 Ms. Susan Bruce, EPA Headquarters Mr. Seth Heminway, EPA Headquarters Ms. Mandy Helwig, EPA Headquarters

Virginia DCR Mr. Mason Harper, MS4 Permit Writer

Representative:

**EPA Contractors:** Mr. Bobby Jacobsen, PG Environmental, LLC

Mr. Max Kuker, PG Environmental, LLC

For a more complete list of inspection participants, please refer to the sign-in sheets in Attachment 4.

#### CITY OF LYNCHBURG BACKGROUND

The City of Lynchburg has been developing and implementing its MS4 Program since 2003. The City's coverage under the current VPDES general permit became effective on July 9, 2008 with an expiration date of July 8, 2013. At the time of the inspection, the City was in MS4 Permit Year 4 (i.e., July 1, 2011 to June 30, 2012), and the City's MS4 Program was operating under its MS4 Program Plan submitted in its 2009 permit registration statement, dated February 19, 2009.

The total population of the City was estimated to be 75,568 people at the time of the 2010 U.S. Census. The MS4 discharges into the following receiving waters: James River-Judith Creek, James River-Opossum Creek, Ivy Creek-Cheese Creek, and Blackwater Creek.

City staff explained that the City created a Citizen's Stormwater Advisory Committee (SWAC), which operated from December 2010 to December 2011 to evaluate funding possibilities for the City's stormwater program. The SWAC recommended the creation of a dedicated Stormwater Utility Fee to provide funding for the City's stormwater program. The City developed and adopted a Stormwater Utility Fee which was approved by City Council in December 2011, and was set for implementation on July 1, 2012. The Stormwater Utility Fee is based upon amount of impervious surface owned by property owners and will be a dedicated enterprise fund for the City's stormwater program.

The City of Lynchburg is served by both a combined sewer system (CSS) and municipal separate storm sewer system. The City encompasses about 50 square miles, of which about four square miles (primarily in the older downtown area) is served by the CSS, while the remainder of the City is served by the MS4. According to the City Director of Water Resources, Mr. Tim Mitchell, the City entered into a Consent Order with the State of Virginia in 1994 for the management of its CSS, with the ultimate goal of separating the City's combined sewer areas.

According to the City's website<sup>1</sup>, "[r]ecognizing that sewer customers would bear most of the costs, the City secured a Special Consent Order from the state. This agreement was the first of its kind to be approved by the EPA and allowed the City to keep sewer rates in line with Lynchburg's median household income. Future increases will also match median household income growth." Because the Consent Order is tied to the City's financial status, the City Director of Water Resources was unable to provide an estimated completion date for separating the remaining combined sewer areas within the City. At the time of the inspection, the City had eliminated 108 of 132 total combined sewer overflow (CSO) points.

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<sup>1</sup> http://www.lynchburgva.gov/Index.aspx?page=3326

#### INFORMATION OBTAINED RELATIVE TO PERMIT REQUIREMENTS

During the inspection, the EPA Inspection Team obtained documentation and other supporting evidence regarding compliance with the Permit. Pertinent information may have been obtained prior to and/or after meeting with City staff during the physical inspection, and is presented in this report as observations. The presentation of inspection observations in this report does not constitute a formal compliance determination or notice of violation.

All referenced documentation used as supporting evidence is provided in Attachment 5, Exhibit Log, and photograph documentation is provided in Attachment 6, Photograph Log. A complete list of documents obtained is provided in Attachment 7, Document Log.

Before the inspection, the EPA Inspection Team formally requested that the City have specific documentation available for review at the time of the inspection. The EPA Inspection Team provided the City with a written list of requested records on February 15, 2012 (hereinafter, EPA Records Request; see Attachment 5, Exhibit 1). The City made numerous documents available to the EPA Inspection Team during the inspection and provided an inventory of the documents presented to the EPA Inspection Team (hereinafter, City Response Inventory; see Attachment 5, Exhibit 2).

The report below describes and outlines Permit requirements with specific sections cited, the related requirements, and observations made during the inspection. The format of the report follows the numeric system used in the Permit and is sequential. Sections of the Permit are restated with the observations concerning those requirements listed below.

The City was given about one month notice prior to the inspection, and the EPA Inspection Team observed that a significant amount of preparation had been done by the City in advance of the inspection. Specifically, the City had conducted pollution prevention refresher training and implemented new BMPs or refurbished existing BMPs at its municipal facilities.

Dry weather conditions were experienced throughout most of the inspection activities. Weather history reports<sup>2</sup> indicate that there was 0.08 inch of precipitation in the City on March 5, 2012.

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<sup>&</sup>lt;sup>2</sup> Weather history reports obtained from National Weather Service Forecast Office website http://www.nws.noaa.gov/climate/index.php?wfo=rnk

# MINIMUM CONTROL MEASURE 3: ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE) PROGRAM

The Permit requires the City to develop, implement, and enforce a program to detect and eliminate illicit discharges into the MS4. The program must be implemented in accordance with Permit Section II.B.3.a–g.

**Permit Section II.B.3.b** (Storm Sewer System Map) – The Permit requires the City to develop and maintain an updated storm sewer system map, showing the location of all known outfalls of the regulated small MS4 and associated surface waters.

#### **Observation 1:**

The City Department of Water Resources maintains a map of its storm sewer system in an electronic geographic information system (GIS)-based mapping program. The map includes MS4 components such as post-construction BMPs, inlets, culverts, pipes, ditches, outfalls, and surface waters. According to City staff, the GIS-based map was populated by digitizing existing drawings and including global positioning system (GPS) data. The MS4 outfalls were mapped by two interns and City staff during the summer of 2004 or 2005 and new storm sewer system components are added to the City's GIS-based map through the plan review process.

The City's GIS did not accurately reflect the drainage at the Public Works and Fleet Maintenance Compound visited as a component of the inspection. Specifically, the City's GIS map did not show the connection of several pipe segments and incorrectly identified several drainage inlets as draining to the combined sewer when they actually drained to Blackwater Creek. Additional details regarding this issue are provided in Observation 12.

**Permit Section II.B.3.c** (**Prohibition of Nonstormwater Discharges to the MS4**) – The Permit requires the City, to the extent allowable, to effectively prohibit, through ordinance or other regulatory mechanism, nonstormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions.

#### **Observation 2:**

The City had adopted an ordinance at Chapter 16.2, Article V, Stormwater Pollution Control, of the City Code to prohibit nonstormwater discharges to the MS4. Section 16.2-76, Violations and penalties, of the ordinance includes the definition of violations and penalties that can be assessed by the City for any acts committed that are prohibited by the ordinance. The ordinance does not include specific procedures to be taken in the event of a prohibited nonstormwater discharge to the MS4. City staff explained that enforcement would be taken on a case-by-case basis, depending on the nature of the violation.

**Permit Section II.B.3.d (IDDE Procedures)** – The Permit requires the City to develop and implement procedures to detect and address nonstormwater discharges, including illegal dumping, to the regulated small MS4.

#### **Observation 3:**

The City's illicit discharge detection and elimination program document had not been updated since the illicit discharge detection and elimination (IDDE) program was initiated in 2007.

Page 1 of the City's 2007 IDDE Program Description Document (hereinafter, 2007 IDDE Document; see Attachment 5, Exhibit 3) states that the document describes the City's initial IDDE program and will be modified annually until full confidence in the program is achieved. Page 3 of the City's 2007 IDDE Document states that since the IDDE program is untried and untested, continual adjustments will be made to the program until its effectiveness can be truly determined.

According to the City Water Quality Manager, in about 2007 the City initiated its MS4 outfall screening program in accordance with its 2007 IDDE Document. At the time of the inspection the City was still operating under its 2007 IDDE Document, which had not been modified since its creation.

Based on discussions with City staff and field observations, the EPA Inspection Team noted several inconsistencies with the way the City's IDDE program functions versus what is described in the City's 2007 IDDE Document. For example, the 2007 IDDE Document states that there are 136 identified outfalls from the MS4, whereas at the time of the inspection, City staff stated there were 149 identified outfalls within the City from the MS4 and about 38 additional outfalls which are located outside of the City's urbanized area. In addition, the City's 2007 IDDE Document does not discuss the use of handheld devices to document and track MS4 outfall screening activities, a practice which was discussed and demonstrated by City staff during the inspection.

# MINIMUM CONTROL MEASURE 4: CONSTRUCTION SITE STORMWATER RUNOFF CONTROL PROGRAM

The Permit requires the City to develop, implement, and enforce procedures to reduce pollutants in any stormwater runoff to the regulated small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. The City's program must be implemented in accordance with Permit Section II.B.4.a—c.

**Permit Section II.B.4.a(5)** (Construction Site Inspection and Enforcement) – The Permit requires the City to develop, implement, and enforce procedures to reduce pollutants in any

stormwater runoff to the regulated small MS4 from construction activities. Furthermore, Section II.B.4.a(5) of the Permit specifies that development and implementation procedures for site inspection and enforcement of control measures must be included.

#### **Observation 4:**

The City had not achieved its stated program requirement of inspecting all active construction sites in the City every two weeks and within 48 hours of any runoff producing storm event.

Chapter 16.1, *Erosion and Sediment Control*, Section 16.1-14(a), *Monitoring, reports, and inspections*, of the City Code states that the City program administrator or his designee shall provide for and/or conduct inspections of land disturbing activity at least once in every two-week period and within 48 hours following any runoff producing storm event.

According to a summary of active construction projects provided by the City, at the time of the inspection there were about 85 active private construction projects of varying sizes within the MS4 (see Attachment 5, Exhibit 4). Of the 85 active projects, the City had 36 active land disturbance permits for commercial activity (13 awaiting bond release), 5 active land disturbance permits for subdivisions, and 44 active agreements-in-lieu (AILs) for residential building sites, which could be located within an active subdivision project.

The City Environmental Reviewer is responsible for conducting site plan reviews for erosion and sediment control, post-construction stormwater management, and conducting erosion and sediment control inspections for the active construction sites described above. The City Environmental Reviewer stated that the City used to have another inspector to assist with conducting the erosion and sediment control inspections, but that at the time of the inspection he was the only staff member assigned to conduct the inspections. He also explained that due to the number of sites within the City, the City was not always able to meet its stated obligation to conduct construction site inspections every two weeks and within 48 hours of any runoff producing storm event.

City staff provided the EPA Inspection Team with a record of construction site inspections conducted over the past couple of years at several construction sites within the City. The EPA Inspection Team reviewed the records for the Belleview Subdivision (City Permit No. RES10-0275; see Attachment 5, Exhibit 5) and the Cornerstone Development (City Permit No. COM06-0601; see Attachment 5, Exhibit 6) and observed the following with regard to erosion and sediment control inspection frequency:

- Belleview Subdivision: 15 days between inspections on August 10, 2010, and August 25, 2010
- Belleview Subdivision: 218 days between inspections on August 25, 2010, and March 31, 2011

- Belleview Subdivision: 22 days between inspections on June 16, 2011, and July 8, 2011
- Belleview Subdivision: 20 days between inspections on July 26, 2011, and August 15, 2011
- Belleview Subdivision: 19 days between inspections on November 2, 2011, and November 21, 2011
- Belleview Subdivision: 22 days between inspections on December 5, 2011, and December 27, 2011
- Cornerstone Development: 20 days between inspections on May 13, 2010, and June 2, 2010
- Cornerstone Development: About 20 days between inspections on December 6, 2010, and January 3, 2011
- Cornerstone Development: 21 days between inspections on June 20, 2011, and July 11, 2011
- Cornerstone Development: After August 22, 2011, inspections were conducted about every four weeks. The inspection record for August 22, 2011 notes that bulk grading for the project was largely complete and that the City permit would remain active but the site would not be inspected every two weeks.

Construction Site Visits Conducted as a Component of the Inspection – On March 6, 2012, the EPA Inspection Team conducted site visits at three privately owned and operated construction projects within the jurisdictional boundaries of the City: (1) Cornerstone Development, (2) University Square, and (3) Belleview Subdivision. Dry weather conditions were experienced during the inspection activities on March 6, 2012. Weather history reports indicate that approximately 0.08 inch of precipitation fell in the City on the day prior to the site visits, March 5, 2012.

The purpose of the site visits was to assess the City's oversight activities for construction sites. During the site visits, the EPA Inspection Team walked the construction sites with City representatives, including the City's dedicated erosion and sediment control inspector. Summary observations pertaining to the site visits to all three of the visited construction projects are presented below. All referenced exhibits are contained in Attachment 5, Exhibit Log, and photographs are contained in Attachment 6, Photograph Log

#### **Observation 5:** Private Construction Project – Cornerstone Development

The Cornerstone Development construction project is located near the intersection of Cornerstone Street and Greenview Drive in Lynchburg, Virginia. The project site is approximately 120 acres total, about 90 acres of which was or will be graded at some point during the project. According to the City Environmental Reviewer, the site plan review process for the project began in 2004 to 2005 and the project originally included four phases. The project phasing was modified to include eight phases and is broken into about 20 lettered blocks within the development. The different phases of bulk grading and development of individual blocks

have permit coverage under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities (hereinafter, VSMP Permit) at various stages during the project. In addition to VSMP permit coverage, the City has issued AILs for single-family home sites within the project area, which require perimeter controls and designated construction entrances at a minimum.

According to the City Environmental Reviewer, stormwater from the western portion of the site enters the storm sewer system and flows to a sedimentation basin in the northwestern corner of the site (see Attachment 6, Photograph 1) before discharging to Dreaming Creek (see Attachment 6, Photograph 2). Stormwater from the eastern portion of the site enters the storm sewer system and flows to a sedimentation basin in the northeastern corner of the site (see Attachment 6, Photograph 3) before discharging to an unnamed tributary to Dreaming Creek. According to the City Environmental Reviewer, both sedimentation basins have been designed as permanent stormwater management control basins that will remain at the site to handle post-construction stormwater runoff. Prior to the completion of the project, the basins will be assessed and maintained (e.g., dredged) to ensure that they meet the original engineering specifications to provide post-construction stormwater management for the development.

The EPA Inspection Team observed the following with regard to erosion and sediment controls at the private construction site and verbally reviewed the observations with the City representatives during the site visit:

- a. The Gutter Buddy® storm drain inlet BMP implemented for an inlet along Portico Street, about 150 feet south of the intersection with Cornerstone Street (Development Block K), did not fully encompass the inlet and an area of disturbed sediment was upgradient and adjacent to the inlet structure (see Attachment 6, Photographs 4 and 5).
- b. Evidence of sediment tracking was observed from an active single-family home construction site near the intersection of Portico Street and Cornerstone Street (Development Block K; see Attachment 6, Photographs 6 and 7).
- c. Evidence of sediment tracking was observed from the main construction entrance to Development Block K along Capstone Drive (see Attachment 6, Photographs 8 and 9) and there was a storm drain inlet about 150 feet to the northwest, along Capstone Drive, without BMPs for inlet protection (see Attachment 6, Photographs 10 and 11).
- d. Evidence of tracking was observed from the concrete washout area to Capstone Drive in Development Block D (see Attachment 6, Photographs 12, 13 and 14).

- e. Concrete waste and residue was observed on the ground surface beyond the silt fence perimeter control installed around the concrete washout in Development Block D (see Attachment 6, Photographs 15 and 16).
- f. The sedimentation basin near the northwestern corner of the site contained standing water with an orange coloration (see Attachment 6, Photographs 17 through 19). Evidence of staining was observed on rocks beneath the sedimentation basin outlet pipe and within the outlet pipe itself (see Attachment 6, Photographs 20 through 22).
- g. Sediment accumulation was observed along a paved path to a bridge crossing of Dreaming Creek near the northwestern corner of the project site (see Attachment 6, Photographs 23 through 25).
- h. The Gutter Buddy® storm drain inlet BMP implemented for an inlet along Cornerstone Street near the intersection with Greenview Drive (Development Block B), did not fully encompass the inlet and there was sediment upgradient and adjacent to the inlet structure (see Attachment 6, Photographs 26 and 27).
- i. BMPs for erosion or sediment control were not implemented for a disturbed area along the northern perimeter of Development Block O (see Attachment 6, Photographs 28 and 29). Accumulated sediment was observed in a downgradient drainage ditch (see Attachment 6, Photographs 30 and 31) which leads to the sedimentation basin near the northeastern corner of the project site (see Attachment 6, Photographs 31 and 32).
- j. Inlet protection BMPs were not implemented for a storm drain inlet in Development Block N adjacent to an area of disturbed sediment (see Attachment 6, Photographs 33 and 34).

# **Observation 6:** Private Construction Project – University Square

The University Square construction project is located near the intersection of Wards Road and Highway 29 in Lynchburg, Virginia. According to the City Environmental Reviewer, construction started in about December 2011, and the project is a commercial redevelopment for the construction of two restaurants and a retail store on a site which used to have a gas station. According to the City Environmental Reviewer, stormwater from the site flows to Rock Castle Creek, which is located directly to the west of the project site. The site will have two permanent bioretention stormwater management structures.

The EPA Inspection Team observed the following with regard to erosion and sediment controls at the private construction site and verbally reviewed the observations with the City representatives during the site visit:

a. Inlet protection BMPs were not implemented for a storm drain inlet near the northeast corner of the site along Highway 29 and sediment

- was observed around the inlet structure (see Attachment 6, Photographs 33 and 34).
- b. Accumulated sediment was observed within the drainage channel along the northern perimeter of the site which drains to Rock Castle Creek (see Attachment 6, Photographs 37, 38 and 39).

#### **Observation 7:** Private Construction Project – Belleview Subdivision

The Belleview Subdivision construction project is located about one quarter mile southeast of the intersection of Forest Road (Highway 221) and Phillips Circle in Lynchburg, Virginia. The construction project includes site improvements and the construction of about 30 single-family homes. According to the City Environmental Reviewer, construction started in about April 2010. An unnamed tributary to Tomahawk Creek flows along the southern perimeter of the site.

According to the City Environmental Reviewer, the City has observed and documented repeated erosion and sediment control issues at the construction site since construction began. The City Environmental Reviewer explained that the City has issued several "Notice to Comply" and "Stop Work Order" enforcement actions to the construction project due to erosion and sediment control issues observed at the site. Copies of the enforcement action documents provided by the City are included as Attachment 5, Exhibit 7.

The EPA Inspection Team observed the following with regard to erosion and sediment controls at the private construction site and verbally reviewed the observations with the City representatives during the site visit:

- a. Sediment-laden flow was observed discharging from the temporary sedimentation basin near the southeastern corner of the site to an unnamed tributary to Tomahawk Creek (see Attachment 6, Photographs 40 through 46).
- b. Evidence of sediment tracking was observed adjacent to a storm drain inlet without BMPs for inlet protection near the intersection of Emeline Drive and Creekview Court (see Attachment 6, Photographs 47 and 48). In addition, accumulated sediment was observed above and on top of the inlet structure (see Attachment 6, Photographs 47 through 50).
- c. A silt fence implemented for sediment control to the northwest of the intersection of Emeline Drive and Creekview Court had collapsed and had accumulated sediment to almost the full height of the silt fence (see Attachment 6, Photographs 51, 52 and 53).
- d. BMPs for inlet protection were not implemented for a storm drain inlet near the southeastern cul-de-sac of Creekview Court and accumulated

- sediment was observed above and on top of the inlet structure (see Attachment 6, Photographs 54, 55 and 56).
- e. Evidence of sediment tracking was observed from a single-family home site entrance near the southeastern cul-de-sac of Creekview Court (see Attachment 6, Photograph 57).
- f. In various locations along the southern perimeter of the site, sediment was observed beyond the silt fence BMPs, upgradient of the unnamed tributary to Tomahawk Creek (see Attachment 6, Photographs 58 through 64).
- g. Evidence of a previous discharge of sediment-laden water from the temporary sedimentation basin near the southwestern corner of the site was observed (see Attachment 6, Photographs 65, 66 and 67).

# MINIMUM CONTROL MEASURE 5: POST-CONSTRUCTION STORMWATER MANAGEMENT PROGRAM

The Permit requires the City to develop, implement, and enforce procedures to address stormwater runoff to the regulated small MS4 from new development and redevelopment projects that disturb greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Act, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the regulated small MS4. The procedures must ensure that controls to prevent or minimize negative impact to water quality and quantity are in place and are implemented in accordance with Section II.B.5.a-b.

**Permit Section II.B.5.b(4)** (**Long-term Operation and Maintenance of Structural Stormwater Management Facilities**) – Section II.B.5.b(4) of the Permit requires the City to require adequate long-term operation and maintenance by the owner of structural stormwater management facilities through requiring the owner to develop a recorded inspection schedule and maintenance agreement to the extent allowable under state, tribal or local law or other legal mechanism. The City must develop, through the maintenance agreement or other method, a mechanism for enforcement of maintenance responsibilities by the operator if they are neglected by the owner.

#### **Observation 8:**

According to City staff, the City has about 255 structural stormwater management facilities (a.k.a., post-construction BMPs), of which about 214 are privately-owned and 41 are owned by the City. The City maintenance crews are responsible for conducting maintenance activities for the 41 City-owned BMPs. Most of the BMPs are maintained on an annual basis, though some are maintained more frequently.

#### Observation 9:

The City had not established a method for recording maintenance schedules and agreements for all privately owned post-construction stormwater management facilities in the City.

According to the City Water Quality Manager and City Environmental Reviewer, the City requires stormwater maintenance agreements

(SWMAs) for privately owned post-construction BMPs. The City has required SWMAs to be recorded with the associated property deed since 2007. An example of the City's current SWMA template is included as Attachment 5, Exhibit 8. As explained by the City Water Quality Manger, the City had established SWMAs for 201 of the 214 privately owned post-construction BMPs within the City and 76 of those SWMAs were recorded with the associated property deeds. About 125 of them were not recorded with the associated property deeds at the time of the inspection. The City had not established SWMAs for about 13 privately owned post-construction BMPs within the City.

The City Water Quality Manager explained that as properties are redeveloped or further developed, the City may then require a SWMA for post-construction stormwater management facilities which had already been installed. In addition, the City Water Quality Manager stated that the City intends to use a Stormwater Utility Fee Credit Program as a mechanism to obtain formal recorded maintenance agreements for stormwater management facilities which did not have recorded agreements at the time of installation.

Section 3 of the SWMA template states the following with regard to enforcement of maintenance responsibilities of the post-construction BMP:

In the event that the Owner fails to inspect, report on, or properly maintain the stormwater system within the above specified time limits, the City may enter upon the property and take whatever steps it deems necessary to maintain the stormwater management facilities. It is understood that the City is under no obligation to maintain these facilities and this agreement shall not be construed to impose such an obligation on the City. If such maintenance by the City is performed, the Owner shall reimburse the City for the costs of such maintenance within ten days of written notice by the City to the Owner.

**Permit Section II.B.5.b(5)** (**Site Inspection and Enforcement for Structural Stormwater Management Facilities**) – Section II.B.5.b(5) of the Permit requires the City to conduct site inspection of post-construction stormwater management facilities and enforce measures consistent with the Virginia Stormwater Management Act and attendant regulations. Chapter 60 of the Virginia Stormwater Management Program, Part III, *Local Programs*, 4VAC50-60-150, *Administrative procedures: maintenance and inspections*, Section E states the following:

Periodic inspections are required for all stormwater management facilities. Localities shall either:

- 1. Provide for inspection of stormwater management facilities on an annual basis; or
- 2. Establish an alternative inspection program which ensures that stormwater management facilities are functioning as intended. Any alternative inspection program shall be:
  - a. Established in writing;

- b. Based on a system of priorities that, at a minimum, considers the purpose of the facility, the contributing drainage area, and downstream conditions; and
- c. Documented by inspection records.

#### **Observation 10:**

Inspections of privately owned post-construction stormwater management facilities had not been conducted on an annual basis to ensure that the facilities were adequately operated and maintained. As stated above, there are about 214 privately owned post-construction BMPs in the City. The City Water Quality Manager explained that the City does not conduct inspections of private post-construction BMPs. The City relies on the BMP owners to conduct annual inspections and perform corrective maintenance, if needed, and provide proof of the actions to the City.

The City Water Quality Manager explained that the City only received eight inspection reports for inspections of privately owned BMPs during Permit Year 3 (i.e., July 1, 2010 to June 30, 2011). As of April 6, 2012, the City had received 68 inspection reports for privately owned BMPs during Permit Year 4 (i.e., July 1, 2011 to June 30, 2012) and the City Water Quality Manager was aware of 17 pending reports.

As described above, the City has established SWMAs for 201 of the 214 privately owned post-construction BMPs. Based on a review of the template SWMA provided by the City, the SWMA requires that the owner provide an annual inspection of the BMP by a qualified inspector. The report must describe the condition of the stormwater management system and must be submitted to the City annually, by the anniversary date of the SWMA. The SWMA also requires that the owner address any identified deficiencies within three months of the anniversary date of the SWMA.

Subsequent to the on-site portion of the inspection, the City Water Quality Manager explained that the City has a letter which is sent out to select BMP owners annually to remind them of their inspection and maintenance obligations. It was unclear to the EPA Inspection Team whether all BMP owners with SWMAs receive the letter or whether the letter is only sent to those BMP owners that have SWMAs recorded with the property deed.

Furthermore, the City had not developed a program or procedure for verifying the accuracy of BMP inspection records submitted to the City by private BMP owners and the City did not have a guidance document or procedure for enforcement to ensure adequate long-term operation and maintenance of post-construction BMPs in the City.

# MINIMUM CONTROL MEASURE 6: POLLUTION PREVENTION/GOOD HOUSEKEEPING FOR MUNICIPAL OPERATIONS

The Permit requires the City to develop and implement an operation and maintenance program consistent with the MS4 Program Plan that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations.

#### Permit Section II.B.6 (Pollution Prevention/Good Housekeeping for Municipal

**Operations**) – The Permit requires the City's pollution prevention/good housekeeping program to include a training component to prevent or reduce pollutant runoff from municipal operations. Furthermore, Section II.B.6 requires the City to identify, implement, evaluate and modify, as necessary, BMPs to meet the following pollution prevention/good housekeeping measureable goals for municipal operations:

- a. Operation and maintenance programs including activities, schedules, and inspection procedures shall include provisions and controls to reduce pollutant discharges into the regulated small MS4 and receiving surface waters.
- b. Illicit discharges shall be eliminated from storage yards, fleet or maintenance shops, outdoor storage areas, rest areas, waste transfer stations, and other municipal facilities.
- c. Waste materials shall be disposed of properly.
- d. Materials that are soluble shall be protected from exposure to precipitation.
- e. Materials, including but not limited to fertilizers and pesticides, that have the potential to pollute receiving surface waters shall be applied according to manufacturer's recommendations.

#### **Observation 11:**

During site visits to multiple City-owned facilities, the EPA Inspection Team identified site concerns pertaining to improper pollution prevention and good housekeeping practices. Specific observations regarding the site visits are included in Observations 12 - 14.

The EPA Inspection Team noted that several storm drain inlets at the Public Works and Fleet Maintenance Compound drain directly to the channelized Blackwater Creek. Activities in the immediate areas of those storm drain inlets include salt storage loading and unloading, de-icing fluid (calcium chloride) loading and unloading, potential stockpile storage of roadway materials (e.g., salt, gravel, sand, etc.), and the storage of vehicles awaiting maintenance and repairs. In addition, with the exception of one storm drain inlet, markers were not in place to indicate that the inlets drained to the creek rather than the CSS. Structural best management practices (BMPs) in the areas around those storm drain inlets were not evident.

The City provided the EPA Inspection Team with the *Public Works Department's SOPs for Pollution, Water Quality and Good Housekeeping*( hereinafter, City's Public Works SOPs). The City's Public Works SOPs contain general references to informal inspections of

certain activities (e.g., chemical storage) and spill response procedures, and do not discuss formal documented inspections of municipal facilities. The City's GIS system did not accurately reflect the drainage at the Public Works and Fleet Maintenance facilities. This is further discussed below in Observation 12.

Municipal Operations Facility Site Visits Conducted as a Component of the Inspection — On March 5, 2012, the EPA Inspection Team conducted three site visits at municipally owned facilities within the jurisdictional boundaries of the City. The purposes of the site visits were to document site conditions and to assess the City's oversight activities for municipal operation and maintenance. The EPA Inspection Team visited the following sites: (1) Public Works and Fleet Maintenance Compound, (2) Stadium Storage Yard, and (3) Graves Mill Road Storage Yard. Dry weather conditions were experienced during the inspection activities on March 5, 2012, although weather history records indicate that there was 0.08 inch of precipitation in the City on March 5, 2012. Observations pertaining to these three site visits are presented below. All referenced exhibits are contained in Attachment 5, Exhibit Log, and photographs are contained in Attachment 6, Photograph Log.

#### **Observation 12:**

Municipal Facility – Public Works and Fleet Maintenance Compound The Public Works and Fleet Maintenance Compound's main entrance is located at 1700 Memorial Parkway, Lynchburg, Virginia (see Attachment 6, Photograph 68). The compound has both combined and separate storm sewer service areas and primarily consists of buildings and impervious surfaces. The compound is divided into three separate sections: (1) the West Public Works Yard, a Public Works facility located uphill and to the west of the Fleet Maintenance facility; (2) the North Public Works Yard, a Public Works facility located to the north of a Fleet Maintenance facility; and (3) a Fleet Maintenance facility.

Stormwater from the separate storm sewer areas of the compound is discharged to Blackwater Creek, which has been channelized and runs underneath the compound from the south end of the Fleet Maintenance facility to north and under the North Public Works Yard. Several storm drain inlets at the compound drain directly to the channelized Blackwater Creek. Blackwater Creek daylights just outside of the northern fence line of the vehicle wash facility located at the North Public Works Yard.

The West Public Works Yard primarily consisted of administrative buildings and vehicle and equipment storage. The EPA Inspection Team only visited the portion of the West Public Works Yard closest to Memorial Parkway (see Attachment 6, Photograph 68), as City representatives stated that stormwater from the rest of the facility drains to the combined sewer system. However, based upon a review of the City's GIS conducted after the site visit, it appears that additional areas of the West Public Works Yard may also drain to the separate storm sewer.

The Fleet Maintenance facility (see Attachment 6, Photograph 70) was constructed in the early 2000s. Fleet Maintenance staff are responsible for

maintaining approximately 700 pieces of rolling stock owned by the City, and primarily focus on minor maintenance activities (e.g., small engine oil changes). Staff at the Fleet Maintenance facility consists of four office staff, six technicians, one small engine technician, and a tenant that supplies automobile parts. The facility includes an indoor washrack and oil/water separator. Vehicles awaiting maintenance and/or repair are stored in several areas throughout the facility and the maintenance activities are conducted indoors. Based upon the site plans provided, stormwater from the facility primarily drains to the separate storm sewer.

The North Public Works Yard consists of a vehicle wash facility, salt and liquid calcium chloride storage, vehicle and equipment storage, bulk material storage, and a storage yard for miscellaneous items (see <a href="Attachment 6">Attachment 6</a>, Photograph 71). According to the site plans provided, stormwater from the facility primarily drains to the separate storm sewer. The vehicle wash facility was constructed in the late 2000s.

The EPA Inspection Team observed the following with regard to pollution prevention and good housekeeping at the Public Works and Fleet Maintenance Compound:

#### **Overall Public Works and Fleet Maintenance Compound**

- a. The City's GIS did not accurately reflect the drainage at the Public Works and Fleet Maintenance Compound. Specifically, the City's GIS map did not show the connection of several pipe segments and incorrectly identified several drainage inlets as draining to the combined sewer when they actually drained to the separate sewer. An aerial image of the facility showing sewer lines from the City GIS is provided as Attachment 5, Exhibit 9. The aerial image was annotated by the EPA Inspection Team.
- b. Certain drainage inlets at the compound drain directly to the channelized Blackwater Creek and inlet markers were not in place to indicate that the inlets drained to the creek rather than the CSS. For example, an unmarked drainage inlet in the portion of the West Public Works Yard closest to Memorial Parkway drained to Blackwater Creek (see Attachment 6, Photograph 69).
- c. No operation and maintenance activities, schedules, and inspection procedures were evident. The City's Public Works SOPs contain general references to informal inspections of certain activities (e.g., vehicle and equipment storage) and spill response procedures.

#### **West Public Works Yard**

a. The EPA Inspection Team only visited the portion of the West Public Works Yard closest to Memorial Parkway (see Attachment 6, Photograph 68), as City representatives stated that stormwater from the rest of the facility drains to the combined sewer system. Based upon a review of the City's GIS conducted after the site visit, it appeared that

additional areas of the West Public Works Yard may also drain to the separate storm sewer.

#### **Fleet Maintenance Facility**

- a. At the time of the inspection, the Fleet Maintenance Facility did not have coverage under the VPDES Industrial Stormwater Permit (VAR05). A SWPPP had not been developed for the facility or compound.
- b. The City conducts industrial activity at the Fleet Maintenance Facility, as specified in 9VAC25-151-10 of the Industrial Stormwater Permit and as further defined in Title 40 of the *Code of Federal Regulations*, section 122.26(b)(14). The observed industrial activities included mechanical repairs and lubrication of vehicles which take place inside the Fleet Maintenance building at the facility; however, vehicles awaiting repair are stored outside on impervious pavement.
- c. Stains were present on the pavement near the vehicles awaiting maintenance in the parking area to south of the Fleet Maintenance building (see Attachment 6, Photograph 85). Public Works Standard Operating Procedure 3.1 (Vehicle and Equipment Storage) requires that parking areas to be inspected for staining/leaks on a schedule established by the appropriate personnel and that drip pans are to be used for vehicles that drip a lot; however, it was not clear that the Fleet Maintenance staff operated under the Public Works SOPs. In contrast to this requirement, facility staff did not have an established inspection schedule and had not utilized drip pans to prevent vehicle fluids from contacting stormwater.
- d. Facility staff had not established a written schedule for inspection and maintenance of the oil/water separator located outside the wash bay in the southwest corner of the facility.

#### **North Public Works Yard**

- a. At the time of the inspection, the North Public Works Yard did not have coverage under the VPDES Industrial Stormwater Permit (VAR05). A SWPPP had not been developed for the facility or compound.
- b. The City conducts industrial activity at the North Public Works Yard, as specified in 9VAC25-151-10 of the Industrial Stormwater Permit and as further defined in Title 40 of the *Code of Federal Regulations*, section 122.26(b)(14). The observed industrial activities at the facility included salt and calcium chloride storage, vehicle washing, bulk material storage, and equipment and vehicle storage.
- c. A storm drain inlet was located approximately 40 feet downgradient of the liquid calcium chloride storage tank. Aside from a secondary containment wall, operational BMPs were not implemented to address spills and leaks from loading/unloading activities that take place on the

- paved pad outside the containment wall (see Attachment 6, Photographs 72 and 73).
- d. White salt residue was present on the pavement outside the bay door on the salt storage building (see Attachment 6, Photographs 71 and 74). A storm drain inlet was located downgradient of the salt residue and close to the salt storage loading/unloading area (see Attachment 6, Photograph 74).
- e. Although bulk materials were not present at the time of the inspection and the area is equipped with partial overhead coverage provided by the roadway, the Bulk Materials Storage area drains to two storm drain inlets located close to the barriers delineating the storage area (see <a href="Attachment 6">Attachment 6</a>, Photograph 75). Sustained flow was noted in one of the two drains, and was presumed to be the channelized Blackwater Creek that flows underneath the Fleet Maintenance Facility and North Public Works Yard (see Attachment 6, Photographs 76 through 78).
- f. A storm drain inlet was located outside the Vehicle Wash Facility and close to the garbage/solid waste scullery (see Attachment 6, Photographs 79 through 81). Sediment and debris accumulation was present inside this storm drain inlet (see Attachment 6, Photograph 82).
- g. Discolored residue was present on the pavement at the rear of the salt spreader trucks stored along the fence line in northeastern portion of the facility. A flow pathway led from the residue to a low spot along the fence line and then offsite (see Attachment 6, Photographs 83 and 84).

#### **Observation 13:** Municipal Facility – Stadium Storage Yard

The Stadium Storage Yard (see Attachment 6, Photograph 86) is located off Naval Reserve Street, Lynchburg, Virginia, just south and downgradient of the impervious parking lot at Lynchburg Stadium. The facility itself appeared to be entirely comprised of pervious surfaces, including a lightly graveled area with at least one storm drain. The Stadium Storage Yard primarily consisted of mulch stockpiles and a horticulture area (see Attachment 6, Photograph 87). No equipment storage was noted at the site.

Stormwater from a portion of the yard is tributary to the onsite storm drain inlet at the facility (see Attachment 6, Photograph 88). This inlet presumably drains to a stormwater outfall located outside of the southern fence line along Naval Reserve Street (see Attachment 6, Photograph 89), but City personnel present during the inspection could not confirm that this was the case. All other stormwater appeared to infiltrate or drain via overland flow to the south toward Naval Reserve Street, or south in a ditch along the western fence line.

The EPA Inspection Team observed the following with regard to pollution prevention and good housekeeping at the facility:

- a. Inlet protection on the onsite storm drain inlet was a newly installed BMP or had recently been refurbished (see Attachment 6, Photograph 88).
- b. Erosion was present on a section of unstabilized soil leading toward a ditch along the western fence line (see Attachment 6, Photograph 90).
- c. Significant run-on from the Lynchburg Stadium parking lot had caused erosion along the northern border of the facility (see Attachment 6, Photographs 91 through 93). A small berm was located along the border of the two properties; however, it was not sufficiently sized to prevent erosion by slowing stormwater flow from the stadium parking lot prior to entering the Stadium Storage Yard property see Attachment 6, Photograph 94).
- d. No operation and maintenance activities, schedules, and inspection procedures were observed.

# Observation 14: Municipal Facility – Graves Mill Road Storage Yard

The Graves Mill Road Storage Yard is located at the 800 block of Graves Mill Road, Lynchburg, Virginia. The yard is located between the southbound lane of the Lynchburg Expressway (Route 501) and the southbound exit lane at Exit 11. The yard is triangular shaped and is surrounded by embankments on all three sides.

The yard appeared to primarily drain to a single storm drain inlet located in the southeast corner of the facility via overland flow across the impervious pavement. The Graves Mill Road Storage Yard consists of one large salt storage building, one liquid calcium chloride storage tank with secondary containment, and material (e.g., gravel) and equipment storage.

The EPA Inspection Team observed the following with regard to pollution prevention and good housekeeping at the facility:

- a. Erosion of the embankment was present near the entrance to the facility from Graves Mill Road on the south side of the facility (see Attachment 6, Photographs 95 and 96).
- b. Gravel inlet protection on the single storm drain inlet located in the southeast corner of the facility was a newly installed BMP or had recently been refurbished (see Attachment 6, Photograph 97 and 98).
- c. Slope erosion was present behind the storm drain inlet in the southeast corner of the facility and the inlet was unprotected on the side adjacent to the slope (see Attachment 6, Photographs 98 and 99). Furthermore, sediment accumulation was present beyond the gravel inlet protection and inside the storm drain inlet itself (see Attachment 6, Photograph 100).

- d. Blown straw had been implemented as a slope stabilization technique for a slope that was burned by a recent brush fire along the eastern property line (see Attachment 6, Photograph 101).
- e. The drain valve for the liquid calcium chloride secondary containment structure was locked in the closed position to prevent unauthorized opening of the valve (see Attachment 6, Photograph 102).
- f. No operation and maintenance activities, schedules, and inspection procedures were observed.



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III 1650 Arch Street

# 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

# CERTIFIED MAIL RETURN RECEIPT REQUESTED

MAR 2 8 2013

Mr. Richard A. Anzolut, Jr. City of Colonial Heights P.O. Box 3401 Colonial Heights, VA 23834

Re: Docket No. CWA-03-2013-0068DN

Administrative Order for Compliance and Request for Information

Dear Mr. Anzolut:

The United States Environmental Protection Agency ("EPA") has reviewed the 2009 and 2010 Annual Reports that the City of Colonial Heights submitted to the Virginia Department of Conservation and Recreation to assess compliance with Virginia's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("General Permit"). Based on the information disclosed in the Annual Reports, EPA has determined that the City: a) failed to adequately implement the minimum control measures required by the General Permit; and/or b) failed to adequately document compliance in the Annual Reports as required by the terms of the General Permit.

Enclosed with this letter is an Administrative Order and Request for Information ("Order and Request") issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318(a), 1319(a). This Order and Request contains findings that the City of Colonial Heights has violated Section 301 of the Act, 33 U.S.C. § 1311 and requests further information regarding these findings, including any subsequent corrective action or any additional documentation absent from the Annual Reports which demonstrates compliance. You should carefully read the contents of the enclosed Order and Request and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in further enforcement action being taken, including a civil suit for penalties and injunctive relief that may be required to comply with the permit.

If you require any information or assistance regarding this matter, please contact Mr. Peter Gold, NPDES Permits and Enforcement Branch, 215-814-5236.

Sincerely,

Jon M. Capacasa, Director Water Protection Division

U.S. Environmental Protection Agency, Region III

Enclosure

cc:

Ginny Snead, VADCR Jerome Brooks, VA DEQ

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

# 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

## IN THE MATTER OF:

City of Colonial Heights 201 James Avenue P.O. Box 3401 Colonial Heights, VA 23834

Docket No. CWA-03-2013-0068DN

ORDER FOR COMPLIANCE AND INFORMATION REQUEST

Respondent

### I. STATUTORY AUTHORITY

This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Sections 308(a) and 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1318(a), 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region III, who in turn has delegated them to the Director of the Water Protection Division, EPA Region III.

## II. STATUTORY AND REGULATORY BACKGROUND

- Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into the waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
- 3) Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue a permit for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions prescribed in the NPDES permit.
- 4) In 1975 EPA approved the Commonwealth of Virginia's program for controlling discharges of pollutants to navigable waters pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). In 1991, EPA authorized Virginia to issue General NPDES Permits.

- In March 1975, EPA authorized Virginia's State Water Control Board to implement the NPDES program in the Commonwealth. On April 1, 1993, the State Water Control Board staff functions were merged by state legislative action into the Virginia Department of Environmental Quality ("DEQ"), which was created on that date. In 2004, the Virginia General Assembly adopted legislation that transferred the Virginia Pollutant Discharge Elimination System ("VPDES") stormwater construction program and the municipal separate storm sewer system ("MS4") permitting and enforcement responsibilities from DEQ to the Virginia Department of Conservation and Recreation ("DCR"). EPA approved DCR's program at the end of December 2004 and the programs were transferred to DCR on January 29, 2005.
- On July 9, 2008, the Virginia Department of Conservation and Recreation ("DCR") issued General Permit No. # VA 04, the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems ("the Permit"). The Permit is scheduled to expire on July 8, 2013.
- 7) EPA is authorized under Section 308(a) of the Act, 33 U.S.C. § 1318(a), to require the owner or operator of a point source to establish records and make such reports as may be necessary to carry out the objectives of the Act, including but not limited to:
  - a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance;
  - b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; or
  - c) Carrying out Sections 1315, 1321, 1342, 1344 (relating to state permit programs) 1345 and 1364.
- 8) Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any condition or limitation which implements. . . section 1342. . . he shall issue an order requiring such person to comply with such condition or limitation.
- 9) Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
- 10) "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
- "Storm water" is defined as "storm water runoff, snow melt runoff and drainage." 40 C.F.R. § 122.26(b)(13).
- 12) The term "municipal separate storm sewer system" or "MS4" is defined as:

- a) "A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act that discharges to waters of the United States;" and
- b) "Designed or used for collecting or conveying storm water. . . "40 C.F.R. § 122.26(b)(8)(i).
- A "small municipal separate storm sewer system" or "small MS4" is defined as all separate storm sewers that are:
  - a) "Owned or operated by the United States, a State, city, town, borough... or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes..." And
  - b) "Not defined as 'large' or 'medium' municipal separate storm sewer systems. . " 40 C.F.R. § 122.26(b)(16).
- Operators of small MS4s are required to obtain NPDES permit coverage if the small MS4 is either:
  - a) "[L]ocated in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census." Or
  - b) "[D]esignated by the NPDES permitting authority. . . " 40 C.F.R. § 122.32. See also 4 VAC 50-60-400.
- 15) Section II.A of the Permit requires the operator of a regulated small MS4 to "develop, implement and enforce a MS4 program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the CWA and regulations."
- Section II.A of the Permit states that "[i]mplementation of Best Management Practices ("BMPs") consistent with the provisions of an iterative MS4 Program . . . constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. . "
- 17) Section II.B of the Permit requires the MS4 Program include Minimum Control Measures ("MCMs") which address: 1) public education and outreach; 2) public involvement/participation; 3) illicit discharge detection and elimination; 4) construction site stormwater runoff control; 5) post-construction stormwater management in new

- development and redevelopment; and 6) pollution prevention/good housekeeping for municipal operations.
- 18) Section II.E.3 of the Permit requires the Permittee to submit annual reports to DCR that report on the "status of compliance with permit conditions, an assessment of the appropriateness of the identified Best Management Practices ("BMPs"), and progress towards achieving the identified measurable goals for each of the MCMs."
- 19) Section III.L of the Permit requires the Operator to comply with all conditions of the Permit.

## III. EPA FINDINGS AND ALLEGATIONS

- 20) City of Colonial Heights, Virginia ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- 21) At all times relevant to this Complaint, Respondent owned and/or operated a regulated small MS4, located in Colonial Heights, Virginia.
- 22) Respondent's small MS4 discharged storm water into the Appomattox River, Swift Creek, Old Town Creek, Fleets Branch (J15 and J17) and associated tributaries, which constitute "waters of the United States" as that term is defined at 40 C.F.R. § 122.2.
- 23) Stormwater discharges from Respondent's MS4 to the Appomattox River, Swift Creek, Old Town Creek, Fleets Branch (J15 and J17) and associated tributaries are permitted only in accordance with the terms and conditions of a NPDES Permit.
- The outfalls from Respondent's small MS4 constitute "point sources" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- 25) Following issuance of the Permit, Respondent submitted a Registration Statement to DCR for coverage under the Permit. DCR subsequently approved Respondent for coverage.
- During April 2011, EPA personnel conducted a review of Respondent's submitted annual reports from 2009 and 2010 located at the DCR Central Office in Richmond, VA (hereafter, "2011 File Review").

#### IV. <u>VIOLATIONS</u>

### Count 1: MCM 6: Pollution Prevention/Good Housekeeping for Municipal Operations

27) Section II.B.6 of the Permit requires the Respondent to "develop and implement an operation and maintenance program consistent with the MS4 Program Plan that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations."

- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- Respondents MS4 Program Plan requires the Respondent to: "Inventory municipal facilities involved with possible stormwater pollution impact. Evaluate current pollution prevention plans for applicable City facilities: DPW, school bus facilities and transit facilities and update as required. Prepare pollution prevention plans for applicable City recreational facilities. Train operations personnel in pollution prevention measures."
- 30) Based on EPA's 2011 File Review Respondent either:
  - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
  - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

## Count 2: MCM 6: Pollution Prevention/Good Housekeeping for Municipal Operations

- Section II.B.6 of the Permit requires the Respondent to "develop and implement an operation and maintenance program consistent with the MS4 Program Plan that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations."
- Section II.E.3.b. of the Permit requires the Respondent to include "the status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures" in each of its annual reports.
- Respondents MS4 Program Plan requires that: "Using City field crews and equipment, clean curb inlets, catch basins and manholes in the stormwater drainage system. Delineate sub basins of non-regulated outfall during Master Plan preparation. Inventory and evaluate all structures within one drainage basin per year. Develop system to track and maintain historical data."
- 34) Based on EPA's 2011 File Review Respondent either:
  - a) Failed to comply with the substantive requirements of its MS4 Program Plan in violation of the Permit; or
  - b) Failed to adequately document compliance with its MS4 Program Plan in violation of the Recordkeeping Requirements of the Permit.

#### V. CONCLUSIONS OF LAW

Respondent failed to comply with the terms of the Permit as described above and is therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

# VI. COMPLIANCE ORDER & INFORMATION REQUEST

AND NOW, this 28<sup>th</sup> day of March, 2013, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) to do the following:

Within thirty (30) days of the effective date of this Order, Respondent shall come into compliance with all requirements of the Permit.

Respondent is further REQUIRED, pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) to do the following:

- 37) Within thirty (30) days of the effective date of this Order, Respondent shall:
  - a. Provide additional evidence of compliance absent from the Annual Report where inadequate documentation is alleged in this Order; or
  - b. Submit a work plan and a schedule to achieve compliance with all MCMs and/or BMPs which are noncompliant with the terms of the Permit as alleged in this Order. The work plan and compliance schedule shall be submitted to:

Mr. Peter Gold U.S. EPA, Region III (3WP42) 1650 Arch Street Philadelphia, PA 19103-2029

and

Ms. Ginny Snead, PE DCR Division of Stormwater Management Office of Regulatory Programs Manager Virginia Department of Conservation and Recreation 203 Governor Street, Suite 206 Richmond, VA 23219

c. Pursuant to 40 C.F.R. § 122.22 all submissions must be accompanied by the following certification: "I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that

there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### VII. <u>GENERAL PROVISIONS</u>

- Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice.
- This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
- Issuance of this Order and Request does not affect EPA's authority to seek additional information under Section 308 of the CWA, 33 U.S.C. § 1318, or otherwise affect EPA's ability to enforce the Permit or enforce or implement the CWA.

## VIII. <u>JUDICIAL REVIEW</u>

Respondent may seek federal judicial review of the Order for compliance pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at http://uscode.house.gov/download/pls/05C7.txt, states the scope of such review.

## IX. OPPORTUNITY TO CONFER

Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Request and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Peter Gold at (215) 814-5236.

# X. <u>EFFECTIVE DATE</u>

43) This ORDER AND REQUEST will become effective thirty (30) days after receipt unless modified or withdrawn.

	MAR	28	2013	
Date:				

Joh M. Capacasa, Director Water Protection Division U.S. EPA, Region III